338.9
Un3lh

Volume 2

NATIONAL INDUSTRIAL RECOVERY ADMINISTRATION

HEARING ON

THE TELEGRAPH COMMUNICATION INDUSTRY

- Reconvened -

THE LIBRARY
OF THE
UNIVERSITY OF ILLINOIS

(Second Day)

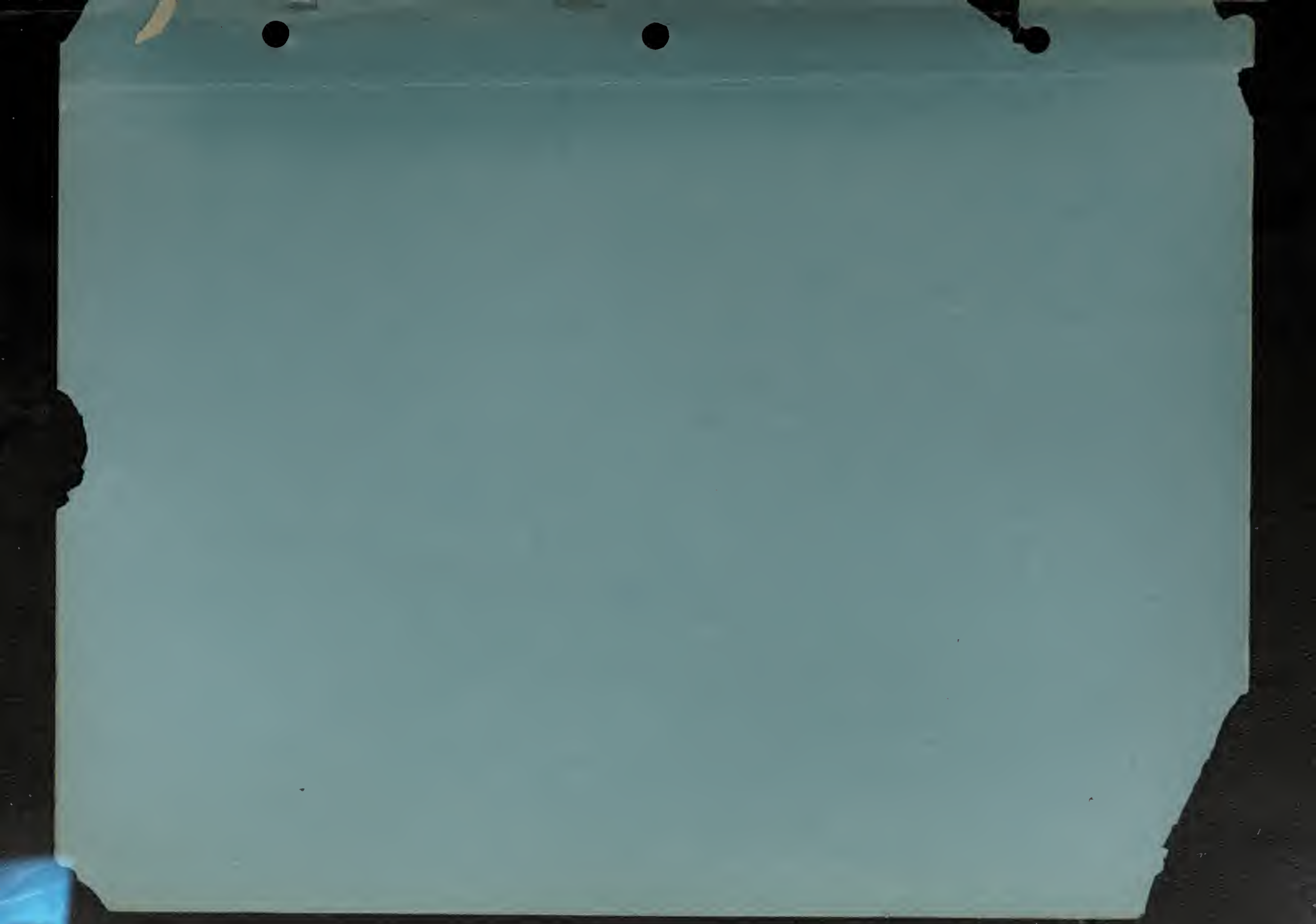
May 17, 1934

JESSE L. WARD
of WARD & PAUL
OFFICIAL REPORTER
EARLE BUILDING
WASHINGTON, D. C.

Office:
NATIONAL 4266
4267
4268

Investment Building:
DISTRICT 2200 — Branch 373

House Office Building:
NATIONAL 3120 — Branch 1073



53582
U.S.31h
.R2

May 17, 1934

Day Session

INDEX

	PAGE
COLONEL NANTON DAVIS Of the Radio Corporation of America	278
STATEMENT ON BEHALF OF THE BELL SYSTEM COMPANIES at hearing on Telegraph Code May 16, 1934	288
STATEMENT OF MR. A. M. POPE President, The First Boston Corporation	337
STATEMENT OF MR. GUY MASON Representing the Chemical Bank & Trust Co., 165 Broadway, New York City	352
Letter containing suggested Amendment	368
STATEMENT OF MR. NYE F. MOREHOUSE Chicago & North Western Railway Co., Chicago, Ill.	375
STATEMENT OF MR. THOMAS F. LITTLEPAGE Attorney fro the Rock Island Railroad in Washington.	392
STATEMENT OF MR. ELISHA HANSON Attorney for American Newspaper Publishers' Association	397
STATEMENT OF MR. GEORGE P. HARGRAVES Business Manager, International News Ser= vice and Universal Service.	405
STATEMENT OF MR. KENNETH C. HOGATE President, Financial Press Companies of America	408
STATEMENT OF MR. GLEN J. RANDAU General Business Manager, United Press	412
STATEMENT OF MR. R.E. DESVERNINE On behalf of the Association of Stock Exchange Firms, New York., and on behalf of the Code Authority for the Code of Fair Competition for the Stock Exchange Firms.	414

878131

Telegraph Communications
Index

	PAGE
STATEMENT OF MR. EUGENE E. THOMPSON	431
Washington Stock Exchange	
List of Exchanges	434
MEMORANDUM REGARDING PROPOSED CODE OF FAIR COMPETITION FOR THE TELEGRAPH COMMUNICATION INDUSTRY	438
STATEMENT OF MR. C. B. CROSS, Boston, Mass.	442
Boston Stock Exchange	
Ass'n. of Leased Line Telegraphers of New England	
General Securities Committee of New England	
BRIEF SUBMITTED IN OPPOSITION TO PROPOSED CODE	449
STATEMENT OF MR. LAURENCE W. FOX jr., Los Angeles	460
Representing the Pacific Coast Ass'n. of New York Stock Exchange Firms	
STATEMENT OF MR. JOHN M. MADRA	472
Representing John F. Clark & Company	
List of Wire Connections of Clark & Co	474
STATEMENT OF MR. F. B. WILKINSON	478
Representing the Erwin Cotton Mills Company	
LETTER TO - L. H. Peebles May 16, 1934.	480
FROM - the Erwin Cotton Mills Co., Durham, N. C.	
STATEMENT OF MR. G. G. DOWLING	484
Representing the New Orleans Cotton Exchange	
STATEMENT OF MR. KARL D. LOOS	489
California Fruits Growers' Exchange, Los Angeles, California	
STATEMENT OF MR. MOULTRIE HITT	501
Representing the Utility Accountants and Tax Consultants	
This Party	503
Others Also Interested	503
Its Interest Is as a "Consumer"	503

Telegraph Communication
Index

	PAGE
More Economical Types of Service	503
Types We Use	503
Call Box and Machine Charges	504
ARTICLE VII - Page 8-11	504
Proposals	504
Section 3 - Page 10	505
Section 4 - Page 11	506
Section 5 - Page 11	506
Section 6 - Page 11	507

NATIONAL RECOVERY ADMINISTRATION

Washington, D. C.

May 17, 1934

HEARING ON

CODE OF FAIR COMPETITION

FOR THE

TELEGRAPH COMMUNICATIONS INDUSTRY.

The above-entitled matter came on for hearing at 10:00 o'clock a. m., in the auditorium of the Department of Commerce Building, Deputy Administrator Leighton H. Peebles presiding.

There were present also:

C. H. Osthagen, Assistant Deputy Administrator;

C. H. McDermott, Secretary to the Deputy Administrator, and

Of the Industrial Advisory Board:

Dexter A. Tutein.

Of the Labor Advisory Board:

D. W. Tracy and H. K. Brunck.

Of the Consumers' Advisory Board:

M. G. Johnston.

Of the Research and Planning Division:

A. J. Hettinger, Jr.

Of the Legal Division:

J. G. Scott, T. H. Kennedy, and J. Skilling

Representing the Interstate Commerce Commission:

Arnold C. Hansen.

PROCEEDINGS

Deputy Peebles: We will continue with the hearing for the purpose of developing a code for the Telegraph Communications Industry.

Colonel Davis, are you ready this morning?

Mr. Davis: Yes, sir

Deputy Peebles: Colonel Manton Davis of the Radio Corporation.

Mr. Davis: Mr. Administrator and gentlemen: I appear on behalf of the Radio Corporation of America and its communication subsidiaries, R. C. A. Communications, Inc., and Radio Marine Corporation; the first engaged in point-to-point and international communication, and the second engaged in communication with ships at sea.

You have recently heard a great deal about unfair practices. There is one thing that you have not heard, and that is any complaints about unfair practices of the N. R. A. itself, and I say with all good will and with all good humor, that, Mr. Administrator, is now what you are about to hear.

I invite your attention to Article No. 4389 and

particularly as the words "the invasion of the Administration to write a code for the industry followed the public hearing do say I when only one of the companies involved, the Postal Telegraph-Cable Company offered any cooperation."

I call on the N. R. A. itself and the gentlemen of the N. R. A. Administration, both those here present and those who preceded you in the N. R. A. discussions, to bear witness to the exact accuracy of the statements I am about to make.

When the first discussions were begun about N. R. A., the discussions were largely concerning the amelioration of working conditions, hours and wages, and I take it that every one will agree that this is one of the primary and one of the fundamental purposes of N. R. A. In those discussions, there was a telegraph organization--that was the Postal--which intimated to you and to all of the other telegraph companies because themselves that the proposals with respect to hours and wages that were then under discussion were impossible for them to meet. And they besought the other telegraph organizations and the N. R. A. people not to insist on the provisions that were under discussion, and it was in consequence of this that the provisions that are now in effect were adopted and which with respect to hours and wages were provisions which the administrative steps were wholly unsatisfactory.

Now, dealing on my own organization May I invite your attention to the statement made on behalf of N. R. A. at the

hearings of May 2, and that statement was not different from the statement that has been made on behalf of R. C. A. since these discussions first began. In that statement this language we used:

"On August 22, Radio Corporation of America wrote to General Hugh S. Johnson that all of its subsidiaries had taken steps or are taking steps necessary to bring them under the Act by having joined with others in their respective industries in submitting agreements for your consideration or by signing the President's Reemployment Agreement."

The same communication to General Johnson further stated:

"It is the desire of the Radio Corporation of America to cooperate with the National Recovery Administration through action by the parent company as well as through action by the subsidiaries."

A copy of that letter was transmitted, Mr. Administrator, to you on November 15, 1933.

The statement on behalf of my corporation on the 2nd of May further continued:

"The position of the Radio Corporation of America and its subsidiaries is now what it has been at all times since the N. R. A. was organized by the company. The manufacturing subsidiaries of the Radio Corporation of America and R. C. A.-Victor Company and the R. C. A.-Radiotron, employing approximately 15,000 men alone have long ago signed the codes appli-

cable to their respective industries and are operating thereunder. R. C. A. Inc. and Radio Marine Corporation of America now operating under the President's Reemployment Agreement will gladly cooperate in the preparation of and sign any acts covering wages, hours and conditions of labor in the Telegraph Communications Industry which is agreed to by the Western Union Telegraph Company and the Postal Telegraph Company and other subsidiaries of the International Telegraph & Telephone Company and approved by the N. R. A."

I think you will search and search in vain in the statements made by the Postal Company for any unequivocable and unconditional statements about their willingness to ameliorate the conditions of labor with respect to wages and hours. They have said to you again and again that they will do something if you will, and the something that they ask you to do is to exercise the powers of the government in their interest in taking away from their competitors something, many of those things which through years of effort and the expenditure of much money those competitors have built up.

Enough of that, Mr. Administrator. Having every confidence in the rectitude and full desire of the Administration to do justice and to deal fairly, I rather think you owe us some honorable amends.

Now, referring to the code before you, may I ask you for a moment to look at Article VII, Section 7. The repetition of

the words "within the United States" han led me to believe that your purpose in this draft was to exclude regulation of international communication business, and I think that is wise. I shall not attempt to repeat the arguments I made before you on the 2d of May to the effect that in international communication circuits, and that is particularly true with reference to international communication circuits by radio, foreign governments and administrations having claimed the same right and the same power to regulate rates and practices over those as has our government, and in consequence of that practical difficulty, I assumed that it was in this section you had intended to eliminate regulation of such circuits.

In order to carry that intent to effect, may I suggest that in Section 7, line 4, after the word "competition", that there be inserted the words "pertaining to telegraph communications originating in and destined to points"--when the language will continue to read picking up the printed matter "within the United States" and so forth.

And in the same section, on page 12, the first line after the words "the United States" I suggest the insertion of the words "in respect of such communications."

I think perhaps this is not the time to discuss in detail orally at such a meeting the various sections and provisions of the code relating to the alleged unfair practices. That discussion, I think, could better be in the form of a brief which

I will ask leave to file at the conclusion of the discussion.

Deputy Peebles: You may have that permission.

Mr. Davis: However, there is one general point that I would like to make, and that is this. This proposed code would regulate a great many matters already now covered by the Interstate Commerce Act, but what is more important, covered in very great detail in the legislation now pending before Congress and which apparently has every prospect of passing. It seems to me almost impossible to think that the government of the United States would provide two methods of regulation and two regulatory bodies. As for example, two regulatory bodies each of which would have jurisdiction to determine the reasonableness of a particular rate, one of which might determine that the rates were reasonable and the other that the same rate was unreasonable.

The best of judgments sometimes disagree. What would a communications organization do when subjected to the jurisdiction of two independent regulatory bodies, each apparently having equal jurisdiction over the same matters? It would seem, therefore, that the suggestion would be in order to H. R. A. that comprehensive regulation, rates and charges and operating practices and the rest and the rest and the rest might well await, and that in this day of hurry and doubt and difficulty and confusion you do not add to all that by setting up another comprehensive regulatory system in addition to the one

already in existence, as so far as the radio is concerned, too, and in addition to the ways contemplated in the legislation now before Congress.

Thank you.

Deputy Peebles: I want to ask you a few questions, Colonel Davis.

You stated that you have signed the code. You meant that you had signed the President's Reemployment Agreement.

Mr. Davis: Yes, sir.

Deputy Peebles: And in signing the President's Reemployment Agreement, you agreed to cooperate in submitting a code to the administration.

Mr. Davis: I so understand.

Deputy Peebles: Have you cooperate in submitting a permanent code to the Administration.

Mr. Davis: Our cooperation in my opinion, Mr. Administrator, is complete when we have told you that we are ready to cooperate in respect to hours and wages, and that so far as our organizations are concerned, that the dotted line will be signed whenever either the other telegraph organizations agree or the regulation with respect to those matters is fixed. In connection with matters outside of the scope of wages and hours, we have argued to you and continue the argument that even as the railroads are not brought under the N. R. A. so as who equally with the railroads are subject to the jurisdiction

ney of the Interstate Commerce Commission ought not to be subject to an additional jurisdiction.

Deputy Peebles: That point is one which is going to be debated by the lawyers. I won't attempt to debate that. The question in my mind is this, - have you submitted to the Administration in any way or form which might be considered as a suggestion, as to a code of wages and hours which might be made a permanent code.

Mr. Davis: No, sir; except in the statement that we have made to you, namely, that we are willing to subscribe— our organization is, as I stated to you, willing to subscribe to regulations with respect to the telegraph industry that would comprise a 40-hour week and a $15 minimum. You remember that I made that statement before you myself, and whatever little qualification there is in it is contained in that statement.

Deputy Peebles: I take it you would have no trouble in complying with the proposed wage and hour schedule in the proposed code?

Mr. Davis: Trouble, yes. That we accept it so long as it is applicable to our competitors equally, yes.

Deputy Peebles: Have you any idea what extra expense it would cost your company?

Mr. Davis: Now, Mr Administrator, I am not the man of

figures of my company. It would be expensive, but that expense we will be quite willing to bear in the interest of the recovery that is your purpose. What that expense would be, if you desire it or require it, I should be glad to have the figures submitted to you.

Deputy Peebles: You referred to this proposed communications bill.

Mr. Davis: Yes, sir.

Deputy Peebles: Have you any idea as to when and if that bill may pass, when it could be made effective to the extent that it might help the labor conditions of the industry?

Mr. Davis: It should be effective very quickly with respect to hours and wages.

Deputy Peebles: Does it touch on hours and wages?

Mr. Davis: Hours and wages, as I remember the bill, and I have studied it very carefully, are not included, and it is for that reason that we have always suggested to you that reasonable regulations with respect to the hours and wages we are ready now and always have been ready to subscribe before the N. R. A. It might well be that the Federal Communications Commission as provided for in the bill in its general regulatory power would have jurisdiction over hours and wages but however that might be, we have stated to you and we repeat our willingness in this regard.

Deputy Peebles: Thank you.

Have you any questions?

Mr. Scott: Any other proposals that you [illegible] specific proposals for amendments to the present draft of [illegible] will be contained in your brief, will they Colonel [illegible] that your statement?

Mr. Davis: That is true, but I have been very reluctant and, perhaps, will continue to be, to make any specific suggestions in respect of the matters which, in my opinion, will be comprehended with the regulatory power of the new federal communications commission, which will likely soon be set up.

Mr. Scott: Thank you.

Deputy Peebles: Thank you, Colonel.

Is there any other appearance for the R. C. A.?

Mr. Davis: No.

Deputy Peebles: Mr. C. P. Cooper, of the American Telephone and Telegraph Company.

opy
f of
. Cooper

r the
Bishop

Fisher
Fine.
Webb

STATEMENT ON BEHALF OF BELL SYSTEM COMPANIES

AT HEARING ON TELEGRAPH CODE May 16, 1934.

From the time the National Recovery Act was adopted it has been the policy of the Bell System Companies to cooperate with the Recovery Administration in the accomplishment of the purposes of the Act. While we have since early doubted the applicability of the Act to an industry already subject to governmental regulation our companies have been operating under a Presidential Agreement since the early part of August 1933, and at the Administrator's request we have filed a Recovery Act Code which is now in the post-hearing stage. Since the signing of the Bell System Presidential Agreement our companies have increased or are in process of increasing their payrolls at the rate of thirty million dollars annually, and more than seven thousand new employees have been added, all without increase of rates or charges to the public. The Deputy Administrator in charge of this hearing has had charge of the proposed Bell System Code for a number of months and I make the statement that the Bell System Companies have fairly and fully cooperated with the Recovery Administration since its inception with full confidence that he will concur in the correctness of this statement.

At the time the first telegraph code was submitted last summer there was no suggestion, at least so far as we have been advised, that we should have any part in it. While for nearly

fifty years the Bell System Companies have leased telegraph circuits I venture the statement that until the possibility of bettering its position in the telegraph field through the N.R.A. occurred to the smaller of the telegraph companies the telegraph industry has been limited in the minds of those engaged in it and the public generally to those companies which do a public telegraph message business. As Mr. White, President of the Western Union Company, testified at the first hearing of this code: " For thepurpose of the National Recovery Act the telegraph industry consists practically of two companies; our own and the Postal."

"When the thought of enlargin,; the definition of the telegraph industry beyond that ordinarily conceived of and at the same time regulating trade practices in the expanded industry under a Recovery Act Code was launched we did not feel that we could or should join in the submission of such a code, notwithstanding our desire to cooperate and our policy and practice of cooperating with the Recovery Administration. Our thought here was founded on at least three bases which seem to us to be fundamental: (1) We Believe that the Interstate Commerce Commission and not the Recovery Administration has jurisdiction as to the trade practices complained of by one of the telegraph companies; (2) it seems to us the the inevitable effect of the proposals suggested by that company would be the raising of rates to our customers, which

under present conditions we think would be against the public interest; and (3) we think the proposals made would adversely affect our employees and their welfare.

Our views as tothese matters have not changed but rather have confirmed as a result of the hearings on this code to date, but the Administrator has seen fit to suggest a code along the lines urged by the complaining company, and, this being so it is our purpose briefly to discuss the provisions of this code in the hope that if the Administrator adheres to what we take it is his tenative conclusion and imposes a code on an expanded telegraph industry he may be fully informed as to the facts which have a bearing on the matters here relevant.

In Article II of the proposed code the following is contained as the definition of "telegraphic Communications":

" The words, 'telegraphic communications" as used herein shall mean any record communication transmitted by cable, wire or radio, or impulses for the reception or reproduction of such communications, or any other activity incidental thereto or connected therewith, including the giving, leasing, or furnishing of equipment, instrumentalities, facilities, or services, to the extent used in the transmission or reception of such communications."

This definition obviously is broad enough to include the following as forms of telegraphic communication: The

communication of sound where,either at the sending or receiving end, a record thereof is made or filed. For example it would include a telephone service in which the message received over the wires is recorded at the subscriber's instrument; it would include the transmission by telephone of a message which, for purposes of record, is filed either at the transmitting or receiving end; it would include the broadcasting of prepared speeches where the matter broadcastis filed for record; it would include the broadcasting of so-called electrical transcription records, that is, the transmission of phonographic records.

Also since the definition inclues "any other activity incidental thereto or connected therewith, including * * * furnishing of equipment * * * ," it would seem to include what is more than a part of a telegraph art. It might include for example, furnishing the special form of paper for use on tele-typewriters which is supplied in enormous quantities by various paper companies.

If the proposed code is intended to cover what is ord inarily considered as telegraphy, but bringing in tele-typewriter exchange and leased wire service, as we assume the purpose to be,something like the following would be a proper definition for the words "telegraphic communications" :

"The words " Telegraphic Communications" as used herein mean the electrical transmission or reception by cable, wire,

or radio of messages transmitted by signals or impulses corresponding to the letters of the message and includes the giving, leasing or furnishing of equipment, instrumentalities, facilities or services distinctive to such transmission or reception."

In suggesting this definition we do not want it to be understood that we are consenting toor joining in the submission of this code or of a code for the telegraph industry. But in this connection, as in the other matters hereinafter referred to, we think we can be of service to the Administrator most effectively by giving to him our ideas on these matters in as concrete form as is possible.

The provisions of Articles III to VI inclusive of the proposed code are not objectionable to us to any appreciable extent so far as their content is concerned, but, as the Deputy Administrator knows, they differ very greatly from similar provisions in the pending Bell System Code, and this difference could not fail to produce a tremendous amount of confusion and difficulty in application. Most of our plant and maintenance men in additi on to many traffic, commercial, accounting and other employees have to do with facilities used for both telephone and telegraph work, as the latter is defined in the proposed code, and the difficulties we would have under two codes must be apparent. It is true that by and large the provisions of the Bell System Code are more

favorable to the employees that those of this proposed code, and it is also true that our comapnies, whatever may be the conclusion of the Administrator as to this code, could and perhaps would follow the maximum hour and minimum wage provisions of the telephone code so far as those provisions were more favorable to their employees, but obviously it will be difficult to have one employee in a group on an overtime basis if he works more than eight hours in any one day, as our telephone code provides, and another employee in the same group on an overtime basis if he works for more than forty hours in any one week, as the proposed telegraph code provides. When the same employee is engaged in both telephone and telegraph work, as would be the case with many thousands of our employees the practical difficulties of the sort indicated become almost insurmountable. If in any situation the policy heretofore adopted by the Recovery Administration that employers should not be placed under more than one code if possible is applicable to this situation. Two codes for Bell System employees will produce confusion many times confunded.

Several provisions of Articles III to VI, however, should be specifically mentioned.

Section 1 of Article III provides; "A normal work day shall not exceed eight consecutive hours." A literal interpretation of this provision would limit a normal day to

seven working h ours added to the hour lunch period ordinarily permitted, with the result that the maximum forty-hour week could not be worked in five days. Possibly this is not the intended meaning of the sentence quoted, but if it is I think I can say that this provision would be extremely objectionable to our employees. Our suggestion is that this provision be omitted and that there be a provision, if so desired, that overtime shall be paid for time worked more than eight hours in any one day.

Section 4 of Article III restricts the maximum working week to forty-eight hours, including all emergency overtime. There is no such restriction in the Telephone Codes and from a service standpoint it is highly objectionable. Although emergencies which require more than forty-eight hours per week would be very rare, on the few occasions when they do occur due to sleet storms, flood damage, fire, etc. this limitation might cause serious reactions on the service.

Section 3 of Article IV apparently is intended to cover a working practice of the telegraph companies where messengers are waiting for assignments, but there are situations in the Bell System that might be confusing in this connection. We have an arrangement whereby section linemen are subject to call at all times, unless specifically excused by their supervisor in charge, a working basis which under the circumstances obviously is both necessary and proper. With-

out doubt it was not the purpose of this section to effect an arrangement of this kind, but its language is so broad that it might be thought to do so.

In Section 9 of Article V provision is made for the establishment of an industrial relations committee for the industry, including a clause that if no truly representative labor organization exists the employee members of the committee shall be nominated by the Labor Advisory Board and appointed by the Administrator. In the Long Lines Department of the American Telephone and Telegraph Company, as well as in all the Bell System Associated Companies, there are representative labor organizations which ha ve existed for a number of years, but of course these organizations have no connection with the labor organizations in the telegraph industry as that industry is ordinarily thought of. Also the problem of our employees who might be included within the broadened definition of the telegraph industry now proposed are very different from those of the employees of the telegraph companies and it would seem clear that it would neither be wise nor desirable that an industrial relations committee should include representatives of our employees together with those of the telegraph companies. Our suggestion in this connection, if industrial relations committees are to be established would be that the existing employees' organizations be recognized where they are in fact representative, and that

those committee be limited , at least so far as we find our employees are conc erned, to representatives of those employees and of the Bell System management.

Coming now to the proposed trade practice rules of Article VII, I shall here assume, contrary to both law and fact as we see it, that the Recovery Administration has jurisdiction as tothese matters. At the outset I want to make it clear that we do not object and have not objected to regulation of these practices by the public authorities. We are used to regulation and we believe that it is in the public interest. For many years the telegraph companies have had a forum, the Interstate Commerce Commission, available for whatever grievances they have in this connection, where evidence can be taken under oath and subject to cross-examination. The record shows that the officers of the Western Union recognize that the Interstate Commerce Commission is the proper forum for the regulation of these practices. Indeed the record also shows that so recently as two weeks before the present session of Congress the officers of the Postal Company took the position "That they had no th ought of asking for a code of trade practices and did not want one." (Record on post-hearing conference, p. 50). But whatever may be Postal's inconsistency or its reason for changing its position I think we can show that the practices complained of are fair and proper and do not constitute unfair competition.

Since the only objection to our rates as such that has been made inthese proceedings is the claim of the Postal Company that our teletypewriter exchange rates are too low I take it that the first part of Section 3 of Article VII may be taken to be aimed at those rates. When teletypewriter exchange service was first introduced it was placed on a 5 minute initial period basis. If the telegraph companies had thought that this service was unreasonably discriminatory to their regular telegraph message service it would seem that they would have put their timed wire service on a similar time basis, either at the same or less rates. They chose, however, to place timed wire service on a 3 minute basis, and at much lower rates than our teletypewriter exchange rates. Later when our custo ers objected to the 5 minute basis we changed the initial period to 3 minutes and reduced the rates. This change brought teletypewriter exchange rates substantially into line with the timed wire rates of the telegraph companies Instead of keeping their rates on this basis,however, the telegraph companies reduced their timed wire rates below those for teletypewriter exchange service.

We want our rates for this class of service as well as for all classes of service which we render to be just and reasonable, and we think that our rates are just and reasonable and we think that our rates are just and reasonable for this service. It is still a new service and frankly an experimental

one on our part. The apparatus which makes this service possible was developed in the Bell Laboratories and we felt and feel that it should be offered to the public at rates which will be reasonably attractive even during the experimental stage through which it is passing. The burden of the complaint here, however, seems based on the fact that no installation or monthly minimum payments are required from our T.W.X customers rather than on the rates which are charged in and of themselves. For many years before the inauguration of our teletypewriter exchange service both telegraph companies had placed telegraph printers in the offices of their customers without installation charges, these printers being used in transmitting messages between the offices of the telegraph companies and those of their customers. There were approximately 10,000 of these printers in use in 1931 and more than that number are in juse at the present time. When the telegraph companies decided not to join in some arrangement for a joint offering of teletypewriter exchange service it was apparent that these 10,000 printers would be used in their competitive timed wire service and they have been so used by both telegraph companies. Under these circumstances obviously no installation charge for printers used in telegypewriter exchange service could be made by us.

Much the same comment applies to the claim that there should be a minimum rental for teletypewriter exchange printers.

Much the same comment applies to the claim that there should be a minimum rental for teletypewriter exchange printers. The telegraph company printers last referred to are operated without stated minimums, although it is doubtless true that the telegraph companies ordinarily will not place printers in the offices of small customers just as we will not place teletypewriter exchange printers in the offices of small customers. In short the situation as to to these telegraph company printers is quite the same as to the teletypewriter exchange printers installed by our companies in not requiring stated minimums.

The meaning of the second part of Section 3 is not very clear but its language might be interpreted to mean that when we rent telegraphic facilities to the Postal Company, using that company, as an example, the compensation therefor must be low enough so that Postal's ability tomaintain the provisions of the telegraph code must not be adversely and materially affected. If this be the meaning these provisions are highly objectionable. Certainly there is nothing in the Recovery Act which would justify a regulation which would require our charges to Postal, ,again using that c ompany as an example, for facilities which that company rents from us to be low enough so as to constitute a guarantee by this company or Postal's operating without loss. Of course this interpretation might well require a result inconsistent with the first

part of Section 3 already commented on, where it is provided that services to the public are to be charged at not less than reasonable rates, for rates low enough so that the lessee's ability to maintain the provisions and standards of this code would not be materially and adversely affected might easily be far below the just and reasonable charges required in the first part of this Section. Conceivably our rates to the public might be raised under the first part of this Section to such an extent that we could get no business in the telegraph field at all and under the second part of this Section our telegraph facilities might have to be rented to Postal at rates sufficiently low to guarantee itsoperating without loss. Of course no such absurd result was intended, but at the very least this Section requires classifaction and limitation.

Section 4 of Article VII seems to provide that no member of the industry shall give or permit rates to the users of any class of service which in any manner discriminate against users of any other class of service. Taken literally this language would prohibit in the telegraph field any classification involving rates less than the highest rates charged for any class of service. On its face it would prohobit day-letter rates and night-letter rates because those rates discriminate in favor of the users of those classes of service against users of other classes of service. It would

so sofar, again making a literal interpretation, as to prohibit entirely all of the so-called leased wire service, teletypewriter exchange service, timed wire service, and all of the other special services which are given by the telegraph companies.

The Deputy Administrator knows and everyone concerned in this proceeding knows that as a practical matter such a suggestion would not accomplish the purpose intended, for business men who now lease wires, etc., not only would not pay the public telegraph message rate for the matter they send over leased wires but they could not possibly pay that rate and survive. We cannot think that whoever drafted this proposed code appreciated the possible meaning of the language used in this connection, and we prefer to think that what he had in mind was to prohibit rates to the users of one class which would unjustly and unreasonably discriminate against users of other classes of service. Possibly this interpretation might be given the language used by judicial decision, but if this is its meaning it should be so stated, and the language I have used in the suggestion last made is taken in substance from a similar provision of the Interstate Commerce Act, where it is provided that there may be such "classes as are just and reasonable." The Interstate Commerce Act further provides that "different rates may be charged for the different classes of messages."

If Section 4 were amended as last suggested there would be no objection to it as a statement of general principles. The difficulty, however, would then be to determine whether or not a particular classification or rate violated the provisions of the section. If complaint were made as to any such classification there would have to be a detailed investigation either by the Administrator or by another Federal agency under the provisions of Section 13 of Article VII. If the investigation were made by the Interstate Commerce Commission the result would be quite the same as if Section 4 were not in existence at all, for the Interstate Commerce Commission already has jurisdiction and authority to make just this sort of an investigation. Without such an investigation no member of the industry could know whether or not a particular classification and a particular rate was valid or invalid.

It should be kept in mind that the classifications of service in this field and the rates thereunder are not only complicated but result from the balancing of many factors. Our T.W.X. service may be used as an example. This is a service which is given by no other company than those of the Bell System, and it differs in many respects from the timed wire service of the telegraph companies, particularly in that it gives a direct connection to those who are using the service. The representatives of one telegraph company have complained that our rates for this service are low compared with long distance telephone

rates. This is so for the very obvious reason that a long distance telephone call offers the give and take of a personal contact that no type of telegraphy can possibly offer. Doubtless our T.W.X. service to some extent competes with the public telegraph message service of the telegraph companies, just as to some extent it competes with long distance telephone service. But it is materially different from both and offers a service to those who use it that is better for their particular needs than those of either competing service. The fact that a new service competes with an existing service or discriminates against the users of the competing service does not, and never has so far as we know, been thought to justify the conclusion that the new service is undesirable or that it should be discontinued. As the United States Supreme Court in the case of Board of Trade v. Christie Grain & Stock Co., 198 U.S. 236, 248, said, in the language of Mr. Justice Holmes:

"the natural evolutions of a complex society are to be touched with a very cautious hand, and such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are hasrful and vain."

Section 5 of Article VII has to do with the sale, lease, or use of appliances, equipment, parts or materials used in telegraphic communications for charges which would result in affecting materially and adversely the ability of any member of the

industry to maintain the provisions and standards of the code, in addition to certain other provisions. Possibly this might be interpreted as requiring each member of the industry to make its charges to the public for all telegraph facilities so high that the ability of all other members of the industry to operate without loss would be guaranteed. Inconsistently enough, if this interpretation be correct, the last clause of this Section prohibits undue increases in rates to the public. A rate might easily be so low as to affect materially and adversely the ability of a competing company to maintain the provisions and standards of the code and any raise which would cure this might cause an undue increase in charges to the public. On this situation a violation of Section 5 could not possibly be avoided in any manner. Perhaps here too so absurd a possibility was not contemplated, but we submit that the provisions of Section 5 should be clarified and limited so as to avoid this kind of possibility if this section is included in whatever code may be prescribed.

Section 6 of Article VII has to do with what is known in the Bell System as a kind of special contract service which has been referred to in these hearings variously as leased wire or private line service. It is here provided that no member of the industry may provide leased wire service, under existing lease or otherwise, which permits its use in telegraphic communication by any person or corporation other than the lessee.

Here also the language used is ambiguous, but the Deputy Administrator has advised us that the intent of this language is to prohibit all such service for others than one person or firm. In other words leased wire service would be permitted between an office of Corporation A and an office of Corporation B, nor between Corporation A and its correspondents at any other place. This provision, if approved and enacted into law, would take this phase of the telegraph industry backward about fifty years, for it is our understanding that for substantially that length of time the so-called correspondent use and joint use of leased wire service has been permitted by not only the Bell System Companies but by both telegraph companies.

The American Telephone and Telegraph Company made its first special telegraph service contract of this type in 1867, thus beginning its leased wire service at about the time it started in business as a long distance telephone company. The first contracts of this kind were made with brokers, but they have been extended to various business enterprises whose communication requirements demand speed, continuity and large capacity. Doubtless the various uses to which this service is put will be commented on by others at this hearing and I shall not go into that phase of the matter in detail at this time. For many years this service was rendered only through Morse terminal facilities, but in 1917 with the advent of the teletypewriter the service came to be rendered both through Morse

terminal facilities and those of the teletypewriter. At the present time the revenue of the American Telephone and Telegraph Company from its Morse leased wire service is approximately equal to that of its teletypewriter leased wire service. So that the Administrator may be advised as to the extent of this type of business done by the American Telephone and Telegraph Company, our Exhibit A is offered at this time, which shows the revenue of the American Company from these types of service as well as from the T.W.X. service, the latter first instituted in 1931, from the years 1913 to and including 1933.

EXHIBIT A

American Telephone & Telegraph Company

Long Lines Commercial Dept.

ANNUAL REVENUE FROM PRIVATE LINE MORSE AND TELE-TYPEWRITER SERVICES AND TELETYPEWRITER EXCHANGE SERVICE

	Morse	Teletypewriter	T.W.X.	Total
1913	$2,905,655			
1914	3,980,687			
1915	2,951,579			
1916	3,578,172			
1917	4,585,076			
*1918	3,241,789			
1919	7,316,167			
1920	9,655,257			

	Morse	Teletypewriter	T.W.X.	Total
1921	$10,069,613	$386,389		$10,455,994
1922	10,854,601	430,919		11,285,520
1923	11,745,018	522,143		12,267,161
1924	11,665,856	731,907		12,397,762
1925	13,131,287	1,043,780		14,175,063
1926	13,677,068	1,642,978		15,320,036
1927	13,725,120	2,436,971		16,162,091
1928	14,464,069	4,465,068		18,929,157
1929	14,991,211	7,370,320		22,361,531
1930	13,186,622	8,761,048		22,957,570
1931	10,986,780	10,118,442	6,000	21,111,192
**1932	8,311,856	9,086,960	383,000	17,801,816
1933	8,155,802	8,026,687	741,245	16,923,941

*Teletypewriter Service Started - Press November 1917

Comm'l. January 1918

Revenue data not available until 1921

** T.W.X. Service started November 1931.

GRL:ES

5-11-34

As I have already stated, the provisions of Section 4, interpreted literally, would outlaw the classification of leased wire service entirely. This classification was attacked some years ago before the Interstate Commerce Commission and the opinion of that Commission in the so-called Private Wire Contracts

Case (50 I.C.C. 731) describes this service and the reasons for the classification very clearly:

"The highly expeditious service of the private wires is generally recognized. In the brief of one respondent reference is made to 'the almost instantaneous service over leased wires.' The ever-ready facilities, the elimination of messenger-boy service, the restricted vocabulary adapted to the needs of a particular line of business only, the possibility of abbreviation in the message proper and of practical elimination for enciphering, and the great proficiency in manual operation attendant upon handling the same class of messages day by day, are conducive to a high-class private service which the public wire can not give ****" (p.741)

"The lessees employ and directly control the telegraphers operating the private wires. These are as a rule men of more than average skill. The nature of the service results in the constant employment in messages of what may be termed brokerage or industry idioms incident to the particular business, and frequently to the abbreviation of these expressions. The greater proficiency due to using a limited vocabulary is reflected not only in greater speed but in greater accuracy in sending and receiving messages.

The publicity attending the transmission and handling of messages sent over public wires, and the accounting therefor, is absent in the case of private wires, thus rendering

the use of code unnecessary. Operators, as well as the senders and receivers of private-wire messages, are in the employ of the lessee and his correspondents and have a direct interest in their welfare, thus insuring a high degree of secrecy.

It is said that the matter transmitted over some industrial wires is of so technical a nature that the accuracy of service over the public wires can not be depended upon. Telegraphic discussions of chemical formulae and artistic designs are instances cited as possible over private wires, but impossible, at least in the view of the lessees, over public wires. Abolishment of private wires would make it necessary to conduct such discussion by mail, it is said.

In short, this service is recognized as being not only highly efficient but the most efficient service generally available for the transmission of intelligence." (p.742)

The Commission's conclusion (on page 793 of the opinion)/that the private wire service classification was "not shown to be unjustly discriminatory or unduly prejudicial to users of " public telegraph service."

It is true, as has been pointed out by one of the telegraph companies here, that the opinion in this Private Wire Contracts Case was rendered during the period of government control and therefore it has no binding effect. But the Commission's description of this service is as applicable now as it was in 1918, and I have quoted it here because of its

fairness, its completeness and the fact that it was made after a most exhaustive series of hearings on the precise question here under discussion.

It may be, however, that the reasonableness of the classification of leased wire service may be conceded, as seems to be indicated by the provisions of Section 6 notwithstanding the seemingly contrary provisions of Section 4, and the claim may be made that the use of this service should be limited to one person or possibly to correspondent use. Logically either of these positions is untenable if the reasonableness of the classification is conceded at all, because a limitation to one user or the use of correspondents or agents would be to increase whatever discrimination there is in this class of service and give the advantage resulting therefrom to the very large firms only who can afford leased wire service for themselves alone, or to those firms which have a number of correspondents. In the Private Wire Contracts case, that it did not consider it unlawful for two or more persons to unite in securing private wire service, was indicated by the Interstate Commerce Commission, and we submit that this conclusion is necessary of the reasonableness of the classification is to be conceded at all. What reason is there that should prohibit smaller companies from joining together so as to get the advantages of leased wire service which otherwise would go only to their very large competitors? This question not only suggests but logically re-

quires the answer that no such reason exists.

But it has been claimed and perhaps will be claimed here that it is not possible to prevent contraband messages in this class of service, and that to do so some limitation of the kind suggested in Section 6 is necessary. One might ask how this limitation would prevent contraband messages, and one might even suggest that it might increase rather than decrease those messages, but, passing those possibilities, I want to point out that our contracts expressly limit leased wire service to the business of those persons named in the contracts. But the argument is then suggested, or has been suggested, that while our contracts provide for control, in fact we do not attempt or accomplish that control. In this connection I would submit our Exhibit B, a copy of which is delivered by the American Telephone and Telegraph Company to each of its new leased wire customers.

EXHIBIT B

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

15 DEY STREET, NEW YORK

Gentlemen:

As a common carrier, this Company is subject to the rules and regulations prescribed by theGovernment to cover such carriers and on November 1, 1910 it was found necessary because of this to issue the following letter to all users of Special Contract Service:

"Under the Act to Regulate Commerce, as amended June 18th, 1910, telephone and telegraph companies doing an interstate business are declared to be common carriers, and as such are prohibited from discriminating in rates or service, and are made liable to a 'penalty of not less than one hundred dollars nor more than two thousand dollars' for directly or indirectly giving free service of any sort to persons other than those specifically enumerated in the Act. Any person, other than those excepted, making use of such free service, is subject to a like penalty for each offence.

"It has come to the notice of this Company that lessees of some of its wires, or their correspondents, are in the habit of transmitting free, or for pay, messages for their customers or friends. We desire to call your attention to the fact that this practice is unlawful, and in violation of our contracts. We are, therefore, compelled to inform you that the practice, wherever it may exist, must be discontinued."

Since the issuance of this letter, many years have elapsed and the points brought out in that letter may have been lost sight of and further, because in that time we have secured many new patrons we feel that it is advisable at this time to call the attention of all of our subscribers once more to the June 18, 1910, Act to Regulate Commerce.

Yours truly,

H. M. CARTER,

General Commercial Manager.

New York, April 18, 1927.

In this Exhibit we call attention of our customers to our position that permitting free, or for pay, messages for their customers or friends not named as parties in the contract is unlawful and in violation of the contract. Also in this connection I offer Exhibit C which is copy of a letter dated July 15, 1932, sent out on the date stated by the Division Managers of the American Telephone and Telegraph Company, Long Lines Depsrtment, to all of our leased wire customers, together with a copy of a typical reply received to this letter. I may add that replies of substantially this type were received from each one of our leased wire customers.

EXHIBIT C

(COPY:GB)

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

Long Lines Dep rtment

750 Huron Road, Cleveland, Ohio

Main 9800

July 15, 1932.

Gentlemen:

From time to time we have found it necessary to call the attention of our customers for special contract service to the provisions of the Interstate Commerce Act prohibiting discrimination in rates or services. In a circular letter dated April 18, 1928, we stated:

"It has come to the notice of this Company that lessees

of some of its wires, or their correspondents, are in the habit of transmitting free, or for pay, messages for their customers or friends. We desire to call your attention to the fact that this practice is unlawful, and in violation of our contracts. We are, therefore, compelled to inform you that the practice, wherever it may exist, must be discontinued."

It is within the prohibition of this provision, which is still in effect, for leased wire customers to engage in the reciprocal handling of messages of other leased wire customers over their respective systems, or to contract or otherwise arrange for the handling of communications of other concerns not connected with such systems. Circuits are furnished for use in the business of the principal and other concerns named in the contract and connected with the system, and no other use of the circuits is permitted.

We are obliged under the law to enforce the restrictions contained in our service contract, and we would, therefore, ask you to carefully review your practices and make sure that there is strict adherence to these requirements; and we would appreciate your advising us as promptly as possible after this has been done.

Yours very truly,

Division Manager.

* * *

(COPY: CB)

J. S. BACHE & COMPANY

New York

September 8, 1932

American Tel. & Tel. Co.

195 Broadway

New York City

Att: Mr. W. R. Newman

Dear Sirs:

Referring to your circular letter of July 15th we beg to advise you that under no circumstances do we allow any amessages to go through our leased lines to private individuals. The wires are entirely used by us for our ownbbusiness.

We are,

Yours very truly,

/s/ J. S. Bache & Co.

* * *

It is true that the Bell System Companies have received over the years an increasingly larger proportion of the leased wire business throughout the country, and the representatives of one of the telegraph companies have suggested that this is due to the fact that we have permitted abuses in connection with joint use leases. I think that the evidence last offered by me shows that we have not permitted such abuses, and one

does not need to go beyond the testimony of the Executive Vice President of the larger telegraph company to show, as the fact indisputably is, that the reason the Bell System business of this type is larger than that of the telegraph companies is because the business public on the whole prefers our service. As Mr. Willever stated at the former hearing on the code:

TOPMAD
file.

"The large growth in the so-called leased wire business of the telephone company as depicted Monday has not resulted as much from the making of combination leases, (as) from the comparative freedom of telephone lines from storm damage and from the quickness of their restorations. Telephone wire facilities between important places, except in the Far West, are underground or in cables and consequently are immune to storm damages to a considerable extent. In cases of interruptions they are able to make up leases from the first wires recovered without impairment of their talking services, while the first telegraph wires recovered must be devoted to the general service and cannot be assigned to the limited use of one lessee."

So much for Section 6. Much more could be said in this connection and doubtless will be said by others at this hearing, but I hope that the data and information that I have submitted may serve to explain and meet the extravagant claims that have been presented to the Deputy Administrator as to our leased wire service. We feel sure that the greater the investigation the Deputy Administrator will make in this connection the clearer will be his conclusion that the classification of leased wire service is reasonable and that the e xisting practices do not constitute unfair competition.

Section 8 probably has no application to the Bell

System Companies, but arguably it might mean that all of our companies must go into the public telegraph message business where a telegraph company does not have lines so as not to "obstruct the free interchange of telegraphic communications with any other member of the industry." I suggest that the language of this section be changed so as to make its meaning clearer and more understandable.

We have no further comment to make as to the content of Article VII except to point out that the provisions of Section 13 seem pretty clearly to indicate that the draftsman of the proposed code himself came to realize that complaints as to practices of the sort here involved might well be referred to a commission of the type of the Interstate Commerce Commission. A provision of this kind, the first to be contained in any code as far as we are advised, implies a recognition of the fact that the Recovery Administration is not organized and does not have the equipment adequately to investigate matters of this sort. Why would it not be better to leave the determination of fair practice matters in this industry in the Interstate Commerce Commission without any reference thereto in the code, instead of providing for a delegation through the Administrator to that Commission in the particular cases as they arise?

I want to refer very briefly to one or two other matters before closing this statement. The statement is

made and often repeated by the representatives of one of the telegraph companies that the furnishing of telegraph circuits by the Bell System is a by-product service, the inference apparently being that for this reason our rates in this field are too low.

While the furnishing of telegraph circuits by the Bell System Companies developed as a by-product service it has long since ceased to be such. For example, at the end of 1933 521,000 miles or 51.7% of the wire in use for telegraph circuits by the American Company was used exclusively for telegraph circuits, and 468,000 or 48.3% of the wire so utilized was used for telegraph and telephone circuits jointly.

At the last hearing on this code a representative of one of the telegraph companies made the following statement: "The Bell System has even gone to the extent of offering, we are informed, certain free long distance telephone service in connection therewith," referring to our teletypewriter exchange service. At the time of the hearing it was stated by our representative that if this sort of thing was done it would be stopped by us, and immediately after the hearing we asked the man who made the statement if he would inform us as to who it was to whom free long distance telephone service was made in connection with a solicitation for teletypewriter exchange service. He refused to give us this

information, and upon our return to New York we inquired from our commercial people as to whether or not any such practice as that suggested existed. Upon being advised in the negative we have twice since requested information from the man who made the statement as to whom he was referring to. In response to our first letter he agin refused to give the information, and no reply has been received to our second letter, although the same was mailed to a New York address from our office in New York on Friday, May 11th. The testimony as to the incident appeared to be second-hand or third-handed hearsay at the time it was given, and as such would not have been admissible in any court in the land, but when there is added thereto the fact that the person submitting this information appears to be wholly unwilling to give us the substantiating information for the purposes of investigation, we submit that the whole incident and testimony based thereon should be completely disregarded by the Deputy Administrator.

Our other suggestion has been made several times by the representatives of the complaining telegraph company, to the effect, as stated at page 210 of the record of the hearing on May 2nd that "the Bell System never allowed the leased line telephone service to grow into an abuse, since it would be damaging to its own major financial business interests." We grant that our leased line telephone service has not led

to abuses, just as we think our leased line telegraph business has not led to abuses, but the suggestion that our practices in the two fields have been different so as to favor our telephone service and to affect adversely the public telegraph service rendered by the telegraph companies is not well founded.

For interexchange service, the Long Lines and all Associated Companies provide private telephone lines to connect stations or switchboards of the same or different subscribers. Furthermore, the Long Lines Department makes no distinction between Private Line Telephone Service and Private Line Telegraph Service as to the use of such services by others than principal, provided such users are named in the contract. The extent to which these various services include others than the principal in the case of Long Lines Department contracts is illustrated by the following:

There are 199 contracts with financial customers for private telephone lines; 68 per cent of these contracts cover use of the service by persons other than the principal. There are 600 contracts for private line teletypewriter and telegraph service with financial customers, 61 per cent of which cover use by others than the principal. There are also 216 contracts with customers for private line telephone service with other financial houses; 31 per cent of these contracts cover the use of the service by concerns other than

the principal. From a service standpoint it is not feasible to have as many stations connected to a telephone private line as to a telegraph private line, and the nature of the communications is such that there is more need for the multiple receipt of messages by telegraph than by telephone. Furthermore, practically all the telephone lines referred to here connect customers' private branch exchange switchboards. In some such cases equipment is provided and paid for by the customer to enable the interconnection of two such p lines at the private branch exchange switchboard.

For intraexchange service, all Associated Companies except the Wisconsin Telephone Company provide private telephone lines between different subscribers. Such private telephone lines are commonly furished between banks, banks and brokers, department stores and wholesale concerns, hotels, and garages, etc.

A few examples of the foregoing are as follows:

Use by Other than Principal or Lessee

A telephone line is furnished by the Long Lines Department between Boston and New York, connected with which are the telephones of 3 brokers in New York and a bank and a broker in Boston.

All of these concerns are named in the contract as being entitled to use the service.

Private Telephone Lines Connecting Different Subscribers in

Different Cities.

An Insurance Company, Philadelphia and Insurance Company, New York;

A large Electric Company, Philadelphia, and another electric company, Camden, N. J.;

A manufacturing Company, Philadelphia, and a manufacturing company, Lester, Pa.

Private Telephone Lines Connecting Different Subscribers in the Same Local Service Area.

A Telegraph Company, and a Ticket Agency, New York;

A Telegraph holding company and a Ticket Agency, New York;

A Broker and a Large Bank, Philadelphia;

A Financial Corporation in Boston and a Bank in Philadelphia;

Philadelphia County Relief Board, and Philadelphia Retail Coal Conference, Philadelphia.

Foreign Exchange Service

Foreign exchange service permits a customer to obtain local telephone service from an exchange other than that in which he is located. Both inward and outward local service are provided and the service is generally listed in the directory so that any subscriber located in the foreign exchange may call the foreign exchange subscriber and the foreign exchange subscriber in turn may communi cate with any

any one connected to the foreign exchange without the payment of toll charges in either direction.

Examples of foreign exchange service are:

A Telegraph Company, although not maintaining an office at Freeport, Long Island, N. Y., subscribes to Freeport service on a foreign exchange basis from their office at 135A Main Street, Hempstead, Long Island, N. Y.;

A Locomotive Works, Eddington, Pa., is connected with Philadelphia;

A Motor Company, Chester, Pa., is connected with Philadelphia;

A Manufacturing Company, Camden, N. J., is connected with New York City.

Conference Service - Telephone or TWX

Interexchange Conference Service, which provides for the simultaneous interconnection of three or more stations, so that each of the stations in the connection may communicate with all the others, is furnished both in connection with telephone and teletypewriter exchange service, the former providing an oral communication service and the latter, a written communication service.

A similar type of rate treatment is applicable in both cases, the rate consisting of a charge based on the mileage between the two stations fortbest apart, plus a flat charge, irrespective of distance, for each additional

There have been many suggestions in these hearings that our rates and those of the telegraph companies for the services and facilities under discussion ought to be raised I do not want to reiterate what I have already said in this connection, but I would call the attention of the Deputy Administrator to the fact that in a number of states our companies have filed their teletypewriter exchange and leased wire rates with the state commissions. Ordinarily these rates may not be raised without the consent of the commissions, and if the proposal here is to increase both intrastate and interstate rates, as we assume from the proposals made in the fact, there might be serious difficulties raised by one or more of the state commissions involved. We have not checked this matter in detail and do not make the statement that any state commission will object to a raising of these rates if the Administrator should decide that they ought to be raised, but our experience with the state commissions lately has suggested that there is not generally among them a disposition to permit the increase of rates, whether for the purpose of taking care of increased costs due to the Recovery Administration or otherwise.

Inconclusion, I want to reiterate the desire of our companies to cooperate with the Recovery Administration. If the Administrator comes to the conclusion that the definitio n of the telegraph industry ought to be expended

along the line suggested in the proposed code and determines to limit the provisions of that code to hours, wages and labor conditions, we shall be glad to cooperate with the telegraph companies and the Administrator in the hope of finding some basis which will not too greatly interfere with the provisions of our own telephone code, although we sincerely think that it would be better policy and more in the public interest to permit our employees to work under the telephone code instead of requiring that they come under two codes. If there were no other forum adequate to take care of complaints as to trade practices we should have no objection to considering those practices here, but admittedly there is such a forum available to those who are here complaining. I think the evidence here will convince the Administrator that the practices complained of are not in fact abuses, and I have already shown that whatever violations of our contracts arise from time to time are adequately investigated and dealt with. My belief is that when the Administrator considers the data and information which will be given him at this hearing he will feel, whatever may be his conclusions as to the jurisidictional point, that it is neither practicable nor in the public interest to regulate trade practices by a Recovery Act Code in an industry where such practices are already subject to regulation by a governmental agency. Finally it is my opinion that the code as proposed

is not likely to produce greater revenue for any telegraph company, but would tend rather to increase unemployment in the industry and react adversely on the business of the patrons of all of the companies affected.

Deputy Peebles: Thank you, Mr Cooper. I would like to ask you a few questions.

Is there any limitation to the number of lessees named in the contract that might be permitted on a leased wire for telegraph or teletypewriter service?

Mr. Cooper: As a practical matter, I do not think you can limit it to any given number. I believe that some of our customers can tell you a great deal more about that than we can. Of course, we want to provide our customers with the best service we can give them to meet their requirements and this service has grown up over a long period of time running almost to 50 years, and I doubt very much if any restrictions or limitations could be imposed at this time that would not react unfavorably on the business of the customers, I mean the business of the people using the leased wire service, and from that into the revenues and earnings of the company.

Deputy Peebles: Can you from memory tell me what may be the maximum number of companies who may be on one existing lease now?

Mr. Cooper: No, I cannot from memory.

Deputy Peebles: If I remember correctly, it has been stated at some previous hearings that may be 25 or more.

Mr. Cooper: I think we have some wires with more than 25.

Deputy Peebles: With more than 25?

Mr. Cooper: Yes.

Deputy Peebles: Where you have private wire charges, are those private wire charges subject to tax, just as a telegram of a telegraph company?

Mr. Cooper: I am sorry I cannot tell you, Mr. Peebles. I could find out about that.

Deputy Peebles: It is merely a matter of interest which I want to know.

Mr. Cooper: Yes.

Deputy Peebles: Another question. Has the Western Union ever protested to you in regard to your leased wire system and the expansion of that system?

Mr. Cooper: They have from time to time objected more or less to our activities in the leased wire field.

Deputy Peebles: On what grounds did they object?

Mr. Cooper: Their general position has been, I think, that this leased wire business was growing more rapidly than they thought was desirable from their point of view, and that in some cases some of the customers of our leased wire service had perhaps violated the regulations.

Deputy Peebles: Has to your knowledge the Western Union ever taken up before in any other body of any kind this question, with the idea of getting regulation of the leased wire business?

Mr. Cooper: Not to my knowledge. Every time anything

has been said to us by them or by the other telegraph company we have promptly investigated the report, and I am frank to say we never found any real evidence of abuse.

Deputy Peebles: Has the Postal Telegraph Company ever protested to you of the expansion of the leased wire business?

Mr. Cooper: Yes, and they were a party to the protest before the Interstate Commerce Commission in the case from which I quoted the Commission's opinion.

Deputy Peebles: Was that ever rendered officially? Was that the opinion of 1918?

Mr. Cooper: Yes. That is a formal opinion. As I said, it came down during the period of government control and I presume has no legal effect. Nevertheless, it was the result of a long investigation by the Commission after a number of hearings, and we have always thought represented the opinion of a regulatory commission after a very thorough investigation of the practices in this class of service.

Deputy Peebles: How much has the leased wire business increased since 1918?

Mr. Cooper: That is in the exhibit. In 1918 it amounted to $6,242,000 in round numbers. For 1933 the total, including teletypewriter and T. W. X. was $16,824,000.

Deputy Peebles: That is somewhat less than the maximum year, is it not?

Mr. Cooper: Yes. The highest year's revenue was in

1930 when the total was $32,958,000, in round numbers.

Deputy Peebles: To clear it up in my own mind. You have on that exhibit T. W. X. and teletypewriter. What is the difference between those two?

Mr. Cooper: The T. W. X. is the teletypewriter exchange service. The teletypewriter is the leased wire service where the operating is done by teletypewriter machines. The Morse service is where the operation is by Morse.

Deputy Peebles: Any questions you wish to ask?

Mr. Scott: Referring briefly to the leased wire and the private channels situation again, don't you recognize it as a fact that the unrestrained use of a private wire might result in impropriety from a public standpoint in that it might set up common carriers, small common carriers not subject to regulation, and that it might result in discrimination as against the public in the use of such service?

Mr. Cooper: Well, if by "unrestrained use", Mr. Scott, you mean the re-sale of messages--

Mr. Scott: (Interposing) Yes. The re-sale or giving or anything of that sort.

Mr. Cooper: If that is what you mean, I would agree with you, yes.

Mr. Scott: In principle, then, you think that is right.

Mr. Cooper: Yes, if it were unrestrained, I think that might be the case.

€

€

€

€

Mr. Scott: Well, there has been no restriction on the part of your company whatever in the number of lessees on one wire, as I understand your answer to Mr. Peebles.

Mr. Cooper: No, I don't think we have restricted the number on any one wire.

Mr. Scott: Upon what do you base how many lessees there should be? Upon the fact of each particular case, or the amount of money involved or what?

Mr. Cooper: We do not do that, Mr. Scott. We want to provide service and are prepared to provide service to meet the requirements of the customer. If the customers plan to go together in two, or three, six, eight or ten, and take a wire between two given points, we have no objection to that.

Deputy Peebles: Is there any difference in the amount of the lease? In the money involved, as to whether there should be one lessee or, say, six or ten lessees?

Mr. Cooper: No, I do not think there is. I think the rate is the same. The rate is based on certain mileage figures and terminal prices, etc.

Mr. Scott: If you do have as many as 25 lessees, I think along the same logical line you could have 250 or 2,500, couldn't you?

Mr. Cooper: I think you might if they did not have very much business to handle.

Mr. Scott: If the capacity of the wire would carry that

kind of a load

Mr. Cooper: Yes.

Mr. Scott: Logically, do you know any place where you could put a stop on the basis of numbers, short of the capacity of the wire, in your present situation?

Mr. Cooper: No, I do not, Mr. Scott.

Deputy Peebles: Has there been any condition, Mr. Cooper, where a group had one leased wire and they found that that wire could not carry all of their business, and they have leased two circuits or three circuits, rather than just the one circuit?

Mr. Cooper: Yes, I think we have had several cases of that kind.

Mr. Scott: I would like to clear my mind on one other point: Upon what kind of a basis do you make charges for the private wire or private channel used? Is it so much a day or so much an hour or so much a minute? Is it a continuous use over a long period of time, or do you start intermittently according to the use made?

Mr. Cooper: No, the rate is, I think, a monthly rate. I am not familiar with all of the rate filings.

Mr. Scott: That gives the preferential right to the use of that channel, then, for the period of the whole month if it is a monthly affair.

Mr. Cooper: Not of that channel. We undertake to provide

a certain service. We do not lease a given wire or a given channel. We undertake to provide a service, and we may today use one channel and tomorrow we may use another channel without the customer knowing that he has been transferred from one to the other.

Mr. Scott: The rate, however, is the same for the period, whether the man makes a great use of it or a small use of it, is that true?

Mr. Cooper: We provide the service on a time basis, and the use he makes of the service is entirely within his control. We exercise no supervision over the time that he uses it within the period for which we provide the service.

Mr. Scott: If you provide the service for a month and if he does not use it at all, he has to pay the same as though he used it every day in the month, - is that the understanding?

Mr. Cooper: Yes.

Mr. Scott: Referring back to 1918 and the I. C. C. decision, hasn't there been substantial changes in the method of performing that kind of service since that time, not only in the extent of its use, but in the method of performance?

Mr. Cooper: I think the service today is much better than we provided in 1918.

Mr. Scott: For technological reasons.

Mr. Cooper: I think it has been improved largely as the result of the installation of the cables to which Mr. Willever

referred. The quality and the stability of the service is much better today than it was in 1918.

Mr. Scott: It certainly has become more widespread so far as the volume is concerned, has it not?

Mr. Cooper: Yes, sir; it has increased in volume.

Mr. Scott: And also it has increased in the number of persons that use it, isn't that true?

Mr. Cooper: I cannot answer as to that. I cannot tell you the numbers, but I would expect to find that there are more users today than there were in 1918.

Mr. Scott: Thank you.

Mr. Cooper: I think all communication services have grown over that period of time.

Deputy Peebles: Can you give me any idea as to the maximum number of circuits that may be leased between any two given points and any groups of lessees? You say there were cases of more than one.

Mr. Cooper: I cannot out of hand. I can get that for you.

Deputy Peebles: Would you say that it would run up to three or four or five or more than that, possibly?

Mr. Cooper: I would not like to say.

Deputy Peebles: I would appreciate that if you would get that for me.

Mr. Cooper: The maximum number of circuits between any

two given points, as between, for example, New York--I want to make sure I understand what you want.

Deputy Peebles: Between New York and San Francisco.

Mr. Cooper: Or New York and Boston.

Deputy Peebles: The number that may be held or under lease to any one group of lessees.

Mr. Cooper: Including the press associations?

Deputy Peebles: No, not including the press.

Are there any other questions?

(No response.)

Deputy Peebles: Thank you very much.

Mr. Cammen: May I ask a question?

Deputy Peebles: No questions are permitted from the floor. You may submit your questions to me in writing. If you want to send a question up, send it in writing, please.

Mr. Cooper: If he wants to send up a question, I can answer it.

Deputy Peebles: Is there any further appearance for the American Telephone & Telegraph at this time, Mr. Cooper?

Mr. Cooper: No.

Friedli 3
7)-
Previn

Deputy Peebles: Mr. A. M. Pope, of the First Boston Corporation.

STATEMENT OF MR. A. M. POPE

PRESIDENT, THE FIRST BOSTON CORPORATION.

Mr. Pope: Mr. Deputy Administrator, my name is Allen M. Pope. I am president of The First Boston Corporation, with executive offices in Boston and in New York.

I wish to say that I merely appear at this hearing as a consumer, a user of a telegraph system, primarily, because we are users of leased wires, and we have joint users with us of those leased wires.

I refer from time to time to our business, using the word "Security." I would like to make it clear that by using that word, in order to be exact, we do not do out a very small amount of business in anything but bonds and notes, not in stocks, but there is a very small fraction of one per cent approximately of the business we do in high-grade preferred stocks, and therefore I have to change the words from "bonds and notes" to "Securities" to include those, but I am merely talking as an investment house dealing in bonds.

The First Boston Corporation is engaged in the distribution of United States government and other high grade securities. It maintains, through leased telegraph wires, communication with the following cities: Hartford, Springfield, Boston, Philadelphia, Baltimore, Washington, Binghem-

ton, Ithaca, Rochester, Buffalo, Bronte, Pittsburgh, Cincinnati, Atlanta, Cleveland, Detroit, Chicago, St. Louis, Kansas City, Minneapolis, St. Paul, Des Moines, Lincoln, Omaha, Denver, San Francisco, Los Angeles, Portland and Seattle.

This system was started over fifteen years ago, at which time the leased wires were confined to the East. The expansion which has taken place has been as a result of demand made possible of fulfillment by the increased facilities of leased wires.

The First Boston Corporation, since the inception of its predecessor companies in 1918, has had, and still has -- and I am giving you a little insight into our business, in order to explain why I am here. I am sorry to take the time in doing that.

It still has as its major policy that of disseminating information for the purpose of making it possible for investors to have an opportunity advantageously to determine their own investment policies. In recent months, the question of information has been very much before the public as a result of the Securities Act and as a result of the Investment Bankers Code. As Chairman of the Drafting Committee of the Investment Bankers Code, I am probably as cognizant as anyone of the stress laid upon the necessity for the dissemination of proper information and to the extent to which this code went towards the protection of the public. The admini-

trator of the National Recovery Administration, in forwarding this code for the approval of the President, stated:

"These fair practice provisions constitute a remarkable document. The essential purposes are to eradicate past and existing abuses and to establish principles and practices which will justify public confidence, greatly assist in restoring the markets for both public and private investment funds and result in an increased flow of investment capital into sound, productive enterprises, which will unquestionably increase employment and distribute added wealth among our people."

I would like to repeat part of one sentence in there, "and result in an increased flow of investment capital."

The greatest blow, in my opinion, to the carrying out of the desires definitely expressed in the Investment Bankers Code and to the dissemination of information and flow of investment capital as carried out by The First Boston Corporation has been delivered by this proposed telegraph code.

In the first place, it is a certainty that the type of information which has to be given in the rapidly changing markets as they exist in this country in U. S. Government securities has to be communicated either through the system of leased wires or by telephone. I say this from knowledge of our own organization, as we have tried every other method and found them impracticable.

The Government bond market is a most important and possibly one of the most important factors affecting the carrying out of the policies of the Government as I know them. In the last analysis, the development of the Government's present policies depends upon the credit of the United States Government, as exemplified by the willingness of the public to purchase Government securities. The public buys Government securities for two reasons: first, because it is satisfied with the Government credit behind the securities, and, second, because of the marketability. In the case of banks, which are by far the largest purchasers of Government bonds, marketability is an absolutely essential factor. You can not have marketability without the dissemination of information and without making it possible for the large and the small investor to reach the essential market, which is New York, with equal facility. The essence of any market is the bringing together of buyer and seller.

I recently listened to a very interesting talk by the distinguished Governor of the Federal Reserve Board on the subject of the Bank Moratorium in March, 1933. I would like to bring to your attention the fact that, just before the moratorium, the reason banks were able to dispose of their Government securities with the rapidity of which they were disposed, in order to create funds with which to pay off depositors who were withdrawing, was in a very large measure brought about

by the activity of the First Boston Corporation. Due to the fact that we had the most extensive wire system at that time of any bond house, we were able to maintain the value of Government securities to a far greater extent than would have been possible otherwise, and we were able to maintain the market because we were able to reach the small and large depositors who were withdrawing their funds from banks and to make it possible for them to purchase Government securities which the banks desired to sell in order to pay off these same depositors.

I would hesitate to guess at the millions of dollars that were in this way saved to banks and the millions of dollars of depositors' funds which were thereby saved by making it possible for banks to keep open and later to be opened. This was done by this Corporation by maintaining a force day and night, running a leased wire system at more than capacity, so that on the last day before the final moratorium we were virtually the only house to which banks nationwide could turn, and so great was the volume of this business that the New York Stock Clearing Corporation, through which we by courtesy are allowed to clear, opened up after the moratorium the day before clearings were made for the Stock Exchange members, primarily in order that our clearings could go through and our settlements with banks in Federal Reserve cities in the United States could be made. The number of transactions

cleared that day by this corporation was 1,348.

That is referring to a crisis the like of which I hope may never occur again, but other crises may come and I fully expect that they will be met to the same degree by The First Boston Corporation if the marketability of Government securities is involved and if we can function in anything like the manner in which we are now and were then functioning.

In order to make it possible for the public generally to have as much information as can be obtained through the dissemination of facts as they are learned from the markets of the world, we make a practice of sending voluminous information over our leased wires in a form which we call "broadcasts", the information contained in which is disseminated through our offices to banks, to investors generally, and to dealers who in turn disseminate it to their investing customers. We estimate the average number of such broadcasts per day to be 171, or an average of 100,000 words per day in the aggregate being received at all stations on the system. Not a word of such broadcasts could be sent over ordinary commercial telegraph lines, first, because it would be too expensive, and second, because it would take too long to have one hundred thousand words written out each day. They just would not go.

That information goes to thousands of individual investors, banks and institutions all over the United States every

day. It makes it possible for those scattered all over the United States to be able to judge their markets, and judge their investment policies, practically with equal facility, whether in San Francisco or New York.

There is no other way that they can do it in bonds that I know of.

Under this system, it is possible for the large and the small investor in any part of the country to have a nearly equal opportunity to visualize the investment markets. It is absolutely impossible even to consider that such information can be broadcast at the sole expense of any one house such as ours without dividing a part of the cost with those who receive the benefits from it.

I cannot conceive how anyone can recognize as a business principle that, if two people are doing business with each other to their mutual advantage, the speed of which business necessitates the use of a leased wire, they must choose or someone must decide for them which of the two will pay the entire expense of the communications between them. This code will not even permit a leased wire from our corporation to another dealer with only one lessee. The wire must originate and terminate in one of our own offices.

It appears to be the general concensus of opinion in the country that one of the greatest impediments to recovery is the stagnation of the capital goods market. This market,

in order to create employment, must be supplied with funds. The necessity for this is recognized by the Congress, as evidenced by the passage in the Senate of certain amendments to the Securities Act of 1933. These funds can not be raised until we have an active general bond market. The wide dissemination of information by this corporation and its broad trading activities are a real contribution towards the creation of such a market, and most certainly are in the public interest.

It must be understood that in dealing with securities, changes in the price of which take place from minute to minute, speed is a prerequisite. If I send a wire to a prospective customer giving him certain information, it necessitates the customer replying stating that he is interested in a purchase or sale, necessitates a return wire making a firm bid or offer, and necessitates a fourth wire making an acceptance thereof. It would seem to me that this alone would prove to anyone that dealing in anything like the present scale over commercial wires was absolutely impossible, as we who are in the business understand it to be. The business will not permit of the lapse of time necessary to write out and send four messages with the inevitable delays between. Anyone sending birthday greetings, for example, would have preference if that message were filed first.

I have had the question asked me as to how, i e., such

business could be done in Europe over a cable. The answer is that United States Government security business is not done in Europe over a cable but that other securities business is done by us in our business with Europe, and it is done through a cable before the close of the markets in this country, and confirmation or information as to the transactions put through while London is awake is transmitted to us at the opening of business the following morning. It puts Europe at somewhat of a disadvantage over the American investor. This is because of the difference in time and the distance. The telephone is used in large transactions only, because of the expense.

Dealing in securities, particularly of the type of high grade securities, including Governments, done by a house such as ours, involving large figures, requires absolute accuracy of figures and the repetition over the wire of every figure used, and you can readily see the terrific cost, to say nothing of the other disadvantages, of using a commercial wire when you require a repeat of every figure used. It is utterly impractical.

Many, many figures come in on one wire, figures of details, terms, percentages, and to repeat those words over commercial wires in any such volume, from the standpoint of cost alone, would be absolutely impracticable, in our opinion.

I will now give you a few figures, because what I said

may sound to you somewhat exaggerated, and I give them for no other purpose than to try to make it possible for you to observe from these figures the proportion of business in this country that this amounts to.

The First Boston Corporation has transactions averaging 1,600 per day for the first quarter of this year, and 1,206 per day for 1933.

The volume of Government bond business, including purchases and sales, or the year 1933 was $5,623,695,390.

The volume of Government bond business for the first quarter of the year 1934 was $1,960,000,000.

The similar volume of securities other than Governments for the year 1933 was $1,451,000,000.

The similar volume for the first quarter of the year 1934 was $516,000,000.

We did business with 2,131 dealers in all parts of the United States in 1933, all of whom benefitted in one way or another from our activities over leased wires.

I would like to bring to your attention that our business, as you can see, is very greatly with dealers, so that what the dealers require are the facilities that we offer them, they doing their business directly with their own customers, and I wish to also emphasize that that is our purpose, to make it possible for the dealers to live in their local communities and not compete with them, and that is the

only way that they can compete, to get the facilities over these wires. Otherwise, as I think I can show you in a few minutes, some of them will go out of business.

I give those figures merely to show the volume of business that will be adversely affected by this code. You will find, for example, the volume of Government securities transactions far in excess of any such volume on the New York Stock Exchange.

The changes occasioned by Sections 4 and 6 of Article VII of this Code eliminate the possibilities of dissemination of information far and wide throughout this country, and immediately place the dealers in distant sections such as the Far West at a tremendous disadvantage. The wire which we maintain to the Pacific Coast in conjunction with certain other persons on the Pacific Coast is virtually the only wire which makes it its business to give regular quotations, and there is no other wire on which a very large proportion of dealers on the Pacific Coast can rely. There is no such thing as a bond ticker on the West Coast.

The effect of adoption of these two sections of the Code, whether intended or not, is to place a great number of dealers at a disadvantage, thereby opening the way to centering in the hands of a few a large proportion of the investment business of the country. If this is desired, it is accomplished by these two sections. I can not see that it is desired.

We have no desire to see it. We do not want it.

I quote by permission from a wire forwarded to the National Recovery Administration by the Wells Fargo Bank & Union Trust Company, of San Francisco:

"We understand certain provisions of proposed [illegible] Code for telegraphic communication industry subject to interpretation that use of leased wires will be limited to one lessee. Stop. If these provisions become effective and this interpretation is possible result in our opinion would be to destroy important business relations on Pacific Coast. Stop. Distance Pacific Coast centers from eastern markets makes fast telegraphic service essential for effective execution of United States Government and other bond transactions. Stop. Under present conditions transcontinental telegraphic service is leased by groups investment dealers and financial institutions who have joined together for this telegraphic service. Stop. Majority would be unable to continue the service as cost to each individual unit would be prohibitive. Stop. This would result in our opinion in materially restricting market for U. S. Government securities and other securities now made available on Pacific Coast. Stop. It would increase cost of buying and selling Government and other securities through increase in spread between bid and asked quotations. Stop. It would cause it to be impossible for many worthwhile local firms now operating here to continue in busi-

ness, thus resulting in reduced employment."

I understand the purpose of sections four and six actually to be that of making it possible for a certain telegraph company to make more money. I consider this as a very laudable ambition on the part of the stockholders of any corporation but I can not conceive how any such regulations are going to benefit that company as far as obtaining any increase from any business such as ours. If we were forced to turn to rely on the services this Code contemplates being offered by the telegraph companies we would be scrapping every bit of progress in communications which has been accomplished since I have been in business. We would be going back to the horse and buggy era; we would be saying to our customers that the ingenuity and progress which has been made in communications systems in this country, producing the world's outstanding communications system, has got to be scrapped and that the benefits of the genius of our engineers are no longer of any value. We would not, in short, use them. We would go back to the only method practical and one which we used before we had as many leased wires, that is, to the long-distance telephone. We could not do as much because of the cost. The country would get very limited information, comparatively, as far as we would be concerned. The telegraph companies would get nothing more.

I can not conceive of any business accruing from the

securities business as now done over any leased wires being given to the telegraph companies. If the business can not be done over the long-distance telephones after the leased wire system has broken down under this code, then it will not be done. The people in the distant sections of the country will merely be obliged to suffer for lack of markets and will be placed at a disadvantage over all located within reasonable striking distance of New York. If leased wires are permitted with one lessee under the Code, as they say they are in one paragraph, but to my mind indicates in another that they are not permitted, these leased wires would be continued provided they did not run too great distances and the continuance of them could be made profitable, but that we would be able to give to the dealers throughout the country, to institutions and the individual investor the wide-spread information they now enjoy, would be out of the question. If this is progress, if this is in line with statements made by the Administration, if this is in line with the main purpose of the Securities Act, if this is in line with the highly-praised Code of the Investment Bankers, then I am very mistaken. As a matter of fact, it has the exact opposite effect. It is forcing the greatest retrograded step in the distribution of securities that has yet taken place.

Deputy Peebles: Thank you, Col. Pope.

I would like to ask you a few questions. You never

transact any business through the regular telegraph companies, do you?

Mr.Pope: I presume that there are wires sent from time to time, yes, sir.

Deputy Peebles: Have you any idea what proportion of your business may go through telegraph companies?

Mr. Pope: I should say that it was negligible, but I would suppose that we did from time to time send a wire to some place where we have not any means of communication other than that, but it would be only on very small, limited transactions, where we have not a wire, and we use the long distance telephone.

Deputy Peebles: How many circuits do you now lease, Col. Pope?

Mr. Pope: I can not tell you the circuits, because there are sometimes two or three cities on a single circuit.

Deputy Peebles: You have more than one circuit between certain points?

Mr. Pope: There is more than one circuit. We have leased more than one circuit.

Deputy Peebles: In these cities that you named, have you only one correspondent in those cities, or several?

Mr. Pope: We have, in some, only one, and in some we have a few, but they are always limited on any one circuit in any city to five.

Deputy Peebles: That is purely so that the wire will not be overloaded I take it?

Mr. Pope: No, I do not think it is for that reason. I do not think I can tell you exactly why they are limited, but it was my understanding that we thought that that was the arrangement that we should have, but I am not certain of it, but I can submit reasons why we are doing it, if you would like to have me do so.

Deputy Peebles: Are there any messages sent over these circuits other than the business of your corporation?

Mr. Pope: Well, you mean the business of our corporation?

Deputy Peebles: Yes.

Mr. Pope: All co-users send their business over the wire. We ourselves only send for our own use over the wires business connected with our own affairs.

Deputy Peebles: What regulation, if any, exists as to the messages sent?

Mr. Pope: Well, I suppose that there are a good many regulations, which I could not give you verbatim, but, if you mean, is it possible to have someone to walk up the street and say, "Send this to San Francisco and tell him I can't come next week", that is never done. We do not permit people to use the wire for such purposes.

Deputy Peebles: Is there any Federal or State regula-

tion over the messages that are sent over these leased circuits?

Mr. Pope: I can not tell you, because I am not in the telegraph business, and I have not gone into the contracts or the law as it affects telegraph companies, but, offhand, I thought there was, and I am just saying, this from a guess. I thought we could not do it.

Deputy Peebles: Thought you could not? I do not follow you.

Mr. Pope: I thought that we could not, say, walk into our office, "Send this thing to a friend of mine."

Deputy Peebles: Is there any regulation over the type of message you may send over this leased wire?

Mr. Pope: You mean, as to whether it refers to our business, or something else?

Deputy Peebles: Yes.

Mr. Pope: I think that is covered. We limit ourselves to busines.

Deputy Peebles: But there is no Federal or State regulation there?

Mr. Pope: That I can not answer. I really do not know. I would be glad to see if I could tell you. I suppose I could.

Mr. Willever: I would like to say that we appreciate the fact that The First Corporation of Boston is one of our largest and best customers.

Deputy Peebles: Mr. Willever, when you say that it is

one of your largest and best customers, do you mean of individual messages, or by leased wires?

Mr. Willever: Individual messages, by cable.

Deputy Peebles: Am I to take your statement to mean that you are transacting an important part of The First Boston Corporation's business?

Mr. Willever: I could not say that. I might say that, as our customers run, The First B. Boston is an important one.

Mr. Pope: I should say that we would be a very important one, because we use the cable.

3 Deputy Peebles: Are their messages mainly cable messages, or leased line messages?

Mr. Willever: I think the bulk of their correspondence is by cable.

Deputy Peebles: That covers the point that we wanted to bring out.

Mr. Scott has some questions.

Mr. Scott: Mr. Pople, all in all, how many correspondents do you have that make use of these various leased circuits?

Mr. Pope: Nine, I think.

Mr. Scott: With how many people in these various communities do you correspond in this business connection? You have more than that number of cities?

Mr. Pope: You asked for correspondents?

Mr. Scott: Yes, the number of correspondents.

Mr. Pope: I think it is nine, but your next question I do not understand.

Mr. Scott: I can not quite understand what you mean by nine. You say you have as high as five in a single city.

Mr. Pope: You used the word "correspondents" and I included correspondents with others when I said five in a single city, but a correspondent is a person who confines his communications to the business that he wants to do with us only, and they send a message saying that they want to buy something from us, or want to sell you something; and I think that there are nine of those.

Mr. Scott: In all of these cities, do you have branch houses of your own?

Mr. Pope: Not in every one. We have twenty-two branch offices in the United States.

Mr. Scott: Exactly what kind of use do you make of them? Do your communications go from Boston to your branch offices, and then, by those branch offices, distributed to others?

Mr. Pope: No. The regulations are, as I understand the regulations, that anybody who is a co-user with us, joint user on the system with us, has to have a terminus in his office, with a telatype machine, whereby he receives his messages. If he is a user, he has to have a telatype machine

originating his messages on his own machine. We do not do it.

Mr. Scott: Is this the practice that you say is confined to five in any city?

Mr. Pope: No, that number includes correspondents and other joint users.

Mr. Scott: How many joint users do you have on all of your circuits, the total?

Mr. Pope: The total -- I think there are 64.

Mr. Scott: Are those joint users all named in the leases ofyour various circuits?

Mr. Pope: Yes I am sure they are.

Mr. Scott: Is there any other use made except by those joint users who are named in the leases?

Mr. Pope: No.

Mr. Scott: Who pays for the lease?

Mr. Pope: You mean the physical check that is handed to the telephone company?

Mr. Scott: Yes, sir.

Mr. Pope: May I ask that question of one of our people?

Mr. Scott: Yes

(After conferring with a gentleman in the audience.)

Mr. Pope: We pay it.

Mr. Scott: It is not a contribution by the joint users?

Mr. Pope: There is a contribution. We would not bear

the entire expense.

Mr. Scott: Leaving aside for the moment the question of service and the type of service which you said is so important for the conduct of your business, the main objection you have to this Code proposal is that it would increase your costs, is it not?

Mr. Pope: Yes. We could not maintain a wire from New York to the Pacific Coast, and in Seattle and Portland and Los Angeles, alone. No one has ever been able to, and I know that we could not.

Mr. Scott: Do you know any reason why the large user, like your company, should have a better rate than the small user for the same type of service?

Mr. Pope: Is it the same type of service? I do not think so. I can give you seven reasons, or ten, why it is not.

Mr. Scott: Why it is not the same type of service?

Mr. Pope: Yes.

Deputy Peebles: We would like to have them.

Mr. Pope: I asked one of our senior officers the other day to list the benefits that we get from this system, aside from any question here, and I have told several people of this list, and I will read it.

In the first place, no. 1 -- there are twelve reasons instead of ten.

No. 1 is instantaneous service.

No. 2 is ever-ready facilities.

No. 3 is elimination of relay messages.

No. 4 is adoption of trade vocabulary.

No. 5 is the wide use of abbreviations.

No. 6 is the elimination of addresses, signatures and identifying symbols.

No. 7 is freedom from cyphering or decyphering.

4 No. 8 is increased efficiency of companies handling one type of business.

No. 9, accuracy in transmission.

No. 10, confidential service.

No. 11, classification of messages, and

No. 12, lessened cost per volume.

Those are twelve good reasons for it.

Mr. Scott: Leaving out the service for the moment, the main thing that you have in mind is that it would be an increased cost if you would be confined between your offices to one correspondent in each of these cities that you mentioned?

Mr. Pope: Yes, you could not run a wire to the Pacific Coast in any case unless a group of houses decided that they would combine. There is not any house on the Coast that can afford to divide with us the wire system. It just stops the business, except what we can do over the telephone, and

I am not trying to exaggerate that; I am just telling you what we know from facts.

Before we had a leased wire to the West Coast we used, entirely and exclusively, except for an occasional telegram, the long - distance telephone.

As far as I know, our competitors use exclusively the long distance telephone now, because they have not that leased wire system, and the reason they have not got it perhaps might be -- I do not know -- because there are only a certain number who can use the leased wire system, and there are not enough to go around for everybody.

One of our competitors has had a leased wire system at one time, with others on his system.

Deputy Peebles: Would you not consider that you are in a prejudicial condition, with your leased wire system, over this competitor who had one and had to abandon it?

Mr. Pope: It would seem so, except for the fact that in the bond business, as we do it, we do it more the way it is done in England. In other words, we are the facilities that our competitors use to exchange bonds with the market and with their customers, and it results in the competitors getting as much advantage in this use of leased wires, almost as much as we do.

Deputy Peebles: You mean that your competitors use your leased wires?

Mr. Pope: No; they use it to buy and sell bonds; and the reason we can buy and sell with them is because we have leased wires to the same degree and volume.

Deputy Peebles: Are not some of your competitors carrying your leased wire service?

Mr. Pope: No, I do not think so.

Deputy Peebles: There was a question asked awhile ago as to what was meant by a correspondent. Can you tell me how many firms are on your leased wire system?

Mr. Pope: My recollection of it is, as I said, 63 or 64.

Deputy Peebles: Are they all named in your lease?

Mr. Pope: Yes, sir.

Deputy Peebles: This revenue tax that exists on telegrams, does that apply to telegrams you send over the leased wires?

Mr. Pope: Well, we pay 5 per cent tax on our lease.

Deputy Peebles: You pay it on the lease itself, with no relation to the number of messages you send over the wire?

Mr. Pope: No, it is based on the cost of the lease.

Deputy Peebles: Do you ever take business for others than those who are named in the lease?

Mr. Pope: You mean, send a personal message?

Deputy Peebles: No, I meant along your banking or se-

curities business.

Mr. Pope: Well, if I understand it correctly, what you mean is, do we take a message and transmit it the same as the Western Union?

Deputy Peebles: Yes.

Mr. Pope: No.

Deputy Peebles: You have no system of charging?

Mr. Pope: No, we would not take it. I do not think anybody ought to offer a leased wire for any such message as that.

Deputy Peebles: Are you under the regulation of the Interstate Commerce Commission in regard to keeping a file of your messages available for one year?

Mr. Pope: I do not think we are.

Deputy Peebles: Does that apply to you, under your leased wire?

Mr. Pope: No, sir; but we are perfectly willing.

Deputy Peebles: That regulation does not apply to you, however?

Mr. Pope: I understand that we do not.

Deputy Peebles: Is there any other appearance that you want to make for the First National Corporation?

Mr. Pope: No, sir.

Deputy Peebles: Mr. W. P. Morehouse, of the Chicago & Northwestern Railroad.

Bishop
fls.

Mr. Thom: Mr. Administrator, he understood that he would not be reached until this afternoon.

Deputy Peebles: He will be ready then?

Mr. Thom: Yes.

Deputy Peebles: Mr. Guy Mason of the Chemical Bank & Trust Company.

STATEMENT OF MR. GUY MASON

Representing the Chemical Bank & Trust Co., New York.

Mr. Mason: Mr. Administrator, like the gentleman preceding me, I am here representing the consumer. My name is Guy Mason, and I am an attorney at law in Washington, D. C. I represent the Chemical Bank & Trust Company of 165 Broadway, New York.

The Chemical Bank & Trust Company has, under lease from the A. T. & T. a private wire which runs from their office in New York to their office in Chicago.

As co-users of that wire, they have the Commerce Trust Company, Kansas City, Missouri; the First National Bank of St. Louis, Missouri; the Mississippi Valley Trust Company, of St. Louis, Missouri; the National Bank of Detroit; and the Cleveland Trust Company, of Cleveland, Ohio.

The primary use to which this wire is put is for the transactions in government bonds. Its secondary use is in the fostering of good relations between itself and its corresponding banks out in the country.

The annual charge of the A. T. & T. for this service, with the government tax of 5 per cent added, the tax fixed in the existing Revenue Act, $3,173.10 a year. Of this amount, the Chemical Bank pays less than 50 per cent, or $1,5[illegible]0.50.

The Commerce Trust Company of Kansas City pays $437.50. The First National Bank of St. Louis pays $320, the Mississippi Valley Trust Company $105, the National Bank of Detroit, $500, and the Cleveland Trust Company $150, or, as I stated, slightly over 50 per cent.

With the banks under the present situation, their dealings largely are now in government bonds. Owing to several causes, primarily the general situation, the banking business is limited largely now to the receipt of money for deposit, in the conduct of a trust department, and the purchase and sale of high-grade bonds, of which the government bonds will constitute the larger part. In dealing in government bonds, the range in price is often as low as 1/32d of a point.

In view of that, time is a great element. As a matter of fact, it is of the essence of the transaction. In other words, an order from one correspondent will come in and within two minutes it is consummated. This could not be done otherwise, because of the delay in the sending and receiving of messages by telegraph. It would have to be done, if at all, by telephone.

In the office of the Chemical and its correspondents,

there are two telegraph operators and a clerk employed which, if the use of the private wire were discontinued, would be out of jobs.

Our correspondents that are using this service do not compare with the First Boston Company, which Colonel Pope represents, but nevertheless it is just as important, the fostering of good relations with correspondent banks is important, in view of the Banking Act of 1933, which attempted to decentralizethe gathering of large holdings, so many in New York, and which, in spite of it, remains the money center and the security center of the world, and those relations must be fostered.

Banks cannot operate in an isolated manner. They have to cooperate and work with and through one another, and in those dealings it is necessary that they have some communication, which will give them quick service. The telegraph service is used, and I judge that my client, like myself, used both, but since the majority of its telegraph business to the holder and larger company, but there is a great deal in that business that cannot be done by telegraph, and must be done by telephone

Now, these banks are not all of the same size, either measured by capital, deposit or earnings. We have some of these banks where their capital is less than $1,000,000. That is not true, of course, with the Chemical, and when you consider the total cost for that service, including the tax of

$3,173, it runs about $20,000 a year, which would make it prohibitive for any of these banks to maintain their service, if they had to maintain it independently of the other.

We will take, for instance, the lowest contribution, which is that of the First National Bank of St. Louis, $300--$320 a month. That is nearly $1,500 a year. That is quite an item, when most banks today are rebuilding surpluses and are not taking any dividends or are making any money with which to pay dividends. They are all particularly outlying banks, repairing capital structures of which the surplus forms a part, and we say that under Section 6 of Article VII, to cut out the use of that private wire by restricting its use to just a lessee named, would make it prohibitive. They could not do it, for the banks are not making the money that they hope to make.

Mr. Scott: I am confused about your figures, Mr. Mason. The first figure of $3,000 to applied?

Mr. Mason: The first figure of $3,173.10 is the monthly toll which we pay the A. T. & T.

Mr. Scott: Monthly?

Mr. Mason: Monthly.

Mr. Scott: That figure is split up among the Chemical and these other banks?

Mr. Mason: And its co-users, which are named in the lease with the A. T. & T.

Of that $3,173.10 a month, the Chemical pays $1,560.60

Mr. Scott: Who actually pays that?

Mr. Mason: The Chemical National Bank & Trust Company, by check.

Mr. Scott: And it receives contributions from the other firms?

Mr. Mason: From the other banks.

Mr. Scott: Does that extend only from Chicago to New York, or to these other places that you mentioned?

Mr. Mason: They tie in, and what the technical arrangement is, I do not know, but they tie in from St. Louis to Cleveland and to Detroit.

Mr. Scott: The only line you have explained about is the one actually between New York and Chicago?

Mr. Mason: Our line runs directly from New York to Chicago. I have a guide of lines here, if you would like to look at it.

Mr. Scott: Just one thing more, and that is, whether or not, so far as you know, there is any use permitted of that wire except by these firms that you mentioned.

Mr. Mason: I sat in on the hearing yesterday morning and heard that question raised, and I made inquiry of Mr. Houston, the first vice-president of the bank, and he said no, absolutely not, no use made of it by any person other than the bank, and only in the transaction of the business of the bank.

Deputy Peebles: May we keep this guide of lines?

Mr. Mason: Is that a signed copy?

Mr. Scott: It is typewritten.

Mr. Mason: You may keep it.

Deputy Peebles: Thank you very much.

Mr. Mason: At this point, if I may, I would like to have made part of the record my letter to you dated May 15, 1934, and contains a suggested amendment.

Deputy Peebles: Very well, that may be done.

(The letter referred to is as follows:)

LAW OFFICES

MASON, SPALDING & McATEE

Tower Building

Washington, D.C.

May 15, 1934.

National Industrial Recovery Administrtion,

Washington, D.C.

Gentlemen:-

IN RE: HEARING - NO. 578-A.

ATTENTION: HON. L.W. PEEBLES,

Deputy Administrator.

T he writer, Guy Mason, has been designated as the representative of the Chemical Bank & Trust Company, 165 Broadway, New York, N.Y., to appear at the hearing, No.578-A Telegraph Communications Industry, scheduled for 10:00 o'clock AM, Wednesday, May 16, 1934. My principal and client thanks the Administrator for this opportunity to place before the Administrator its views and suggestions with regard to Section 6 of Article 7 of the proposed Code for the Telegraph Communications Industry.

The Chemical Bank & Trust Company since 1924 has been using, under lease from the American Telephone and Telegraph Company, a telegraph circuit between its office in New York and its office in Chicago. The circuit included the necessary equipment to operate the same. Sharing in the use by and

with the consent of the lessor are the Cleveland Trust Company, Cleveland, Ohio, National Bank of Detroit, Detroit, Michigan, Mississippi Valley Trust Company, St. Louis, Missouri, First National Bank, St. Louis, Missouri, and Commerce Trust Company, Kansas City, Missouri. Until their failure the Guardian Trust Company, of Cleveland, and the National Bank of Commerce, of Detroit, share the use of this circuit instead of the two banks named from those cities.

The monthly toll charged the lessee by the lessor is $3,023, to which is added a Federal tax of $151.10 making a total monthly toll of $3,173.10. The users of this circuit share the expense as follows:

Commerce Trust Company, Kansas City, Mo.	$437.50
First National Bank, St. Louis, Mo.	330.00
Mississippi Valley Trust Co. St. Louis, Mo.	105.00
National Bank of Detroit, Detroit, Mich.	500.00
Cleveland Trust Company, Cleveland, Ohio	350.00
	$1,612.50

The primary use to which the circuit is put by the lessee and its co-users is for the purchase and sale of high grade bonds, particularly Government bonds. It has been found from experience that in dealing in Government bonds time, without exception, is of the essence. Often, more often than not, in these days bonds are bought and sold on a range of 1/32nd of a point. For instance, an order to sell may

be filed in the Chicago office of the lessee and within two minutes be consummated in the lessee's New York office, in which time the bond price has moved up or down 1/32nd of a point. In the handling of large blocks of bonds a movement of 1/32nd of a point runs into large figures.

The circuit has been of tremendous value to the lessee in developing relationship between the lessee and its correspondents, and in enabling the lessee and its co-users to handle promptly foreign exchange, and other banking matters in which time is an element.

Also, many small banks, which are in sense feeders to the banks mentioned herein as users of this circuit, buy and sell their bonds through these banks, and their bond business, as well as other business for them, is transmitted over this circuit.

Section 8 of Article 7 reads, in part, as follows:

"No member of the industry shall enter into any lease of a wire, or provide any leased wire service, under existing lease or otherwise, which permits the use of such wire in telegraphic communication by any person or corporation other than the lessee thereof; nor shall any member of the industry permit any use of a leased wire, for compensation or otherwise, under existing lease or otherwise, which will result in giving to any user thereof, other than the lessee, a rate of service more favorable than that which is afforded

to other persons using or requiring substantially similar service."

The banks mentioned as sharing in the use of the circuit are not directly parties to the lease. While the appendix to the lease names lessee's co-usersfor the purpose of installation and maintenance of equipment necessary to the use of the circuit, the lease nevertheless is between the American Telephone & Telegraph Company and the Chemical Bank & Trust Company. The inhibition against leasing or furnishing service under an existing lease found in the above language of the proposed Code would prevent, in the opinion of the lessee, the banks named from getting the service they now get. If, by reason of the furnishing of equipment and wire service to the banks named other than the lessee, would make them parties to the lease, then the second inhibition in this Section would preclude them getting service on account of the non-uniformity of the toll paid.

It must be borne in mind that all of these banks are not the same size, measured by their capital, deposits, earnings, or liquidity. Their fields of service are not the same, and the amount of business each does over the circuit is not the same in volume. Also, independent of each other, exceptin g the lessee, the banks using this circuit do not and would not have sufficient business to warrant the leasing of a wire or circuit for their exclusive use.

To enforece the provisions of this Section as now written would simply destroy the use of this leased wire as all the users would have to give up the service on account of the expense. This would entail losses to the users and to their patrons and correspondents by reason of their inability to take advantage of narrow market ranges in the purchase and sale of bonds, which advantage they now possess. Also, it would force the banks in question to develop new means of fostering good relationship between themselves and their correspondent banks.

The Chimical Bank & Trust Company is not informed as to the purpose of this Section, or are they acquainted sufficiently with the technicalities of the telegraph industry to judge as to the wisdon of this provision, and, consequently, offer no criticism as to it or the proposed Code, but it does feel that in view of the restriotions which have been placed upon banks by the rules of the Federal Reserve Board, the Banking Act of 1933, the Bankers' Code, and that restriction found in the stock market control legislation now pending in Congress, that there should be no further restriction by depriving them of the use of service which, in their judgment has no influence in the matter of fair competitive practice in the Telegraph Communications Industry.

The Chemical Bank & Trust Company suggests that the second paragraph of Section 6, Article 7, of the proposed

Code be amended to read as follows:

"This Section shall not apply tointerchange of wire facilities between members of the industry, or to wires, circuits, or service furnished to the United States or to any of its agencies, or banks which are members of the Federal Reserve System, or to the Press."

The above amendment being an exception in character, would not interfere with the Telegraph Communications Industry in governing its own affairs, but would at the same time not destroy a relationship which has little or no bearing on the Telegraph Communications Industry as a whole; it leaves to this lessee a valuable service it has enjoyed for a number of years.

Respectfully,

(Signed) Guy Mason

Guy Mason, Representative and Attorney for the CHEMICAL BANK & TRUST COMPANY OF NEW YORK.

Deputy Peebles: Since I recognized Mr. Willever, and have refused to recognize Mr. Cammen from the floor, I asked him to submit his question, and in my opinion it does not pertain to the codes, and so I suggest that he talk the matter over with Mr. Cooper.

We will recess now for lunch, and meet again at 2 o'clock.

(Thereupon, at 13:47 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

AFTERNOON SESSION

(The hearing was resumed at 2:00 o'clock p. m.)

Deputy Peebles: The next witness to be called at this hearing will be Mr. N. F. Morehouse of the Chicago & North Western Railroad.

Will you identify yourself for the record, Mr. Morehouse?

STATEMENT OF MR. NYE F. MOREHOUSE

Chicago, Illinois.

Mr. Morehouse: Mr. Administrator: I appear here on behalf of the Chicago & North Western Railway Company and the Chicago, St. Paul, Minneapolis & Omaha Railroad Company, these two companies being affiliated companies and their lines being known as the Chicago & North Western Railway System.

The Chicago and North Western Railway Company was organized in 1859. In that same year it made a contract with a telegraph company in order to obtain telegraphic communication along its line of railroad in Northern Illinois and Southern Wisconsin some 300 or 400 miles in length at that time.

Since that time, the railroad has extended to a milsage of 8,400, located in nine States. As the railroad extended, telegraph lines were also extended along and upon its right of way. These telegraph lines were arranged for and considered as a part of the necessary facilities for equipping and operating the railroad, as the telegraph was used very extensively in dispatching and directing the movement of trains, as well

as a means of speedy communication between officers and agents in carrying on the general business of the railroad. These telegraph facilities still exist and are still very extensively so used at this time.

As an outgrowth of that original contract of 1859 and succeeding earlier contracts, the railroad in 1898 entered into a contract with the Western Union Telegraph Company covering these telegraphic facilities and that contract still remains in effect.

Under these contracts, the telegraph company has been obligated to construct, and has constructed and maintained on the railroad right-of-way a telegraph line wherever the railroad has extended its line. It has made these telegraph lines available for the use of the railroad at all times in operating its railroad. The Telegraph Company has furnished the materials and labor for constructing these lines, the material for maintaining them and a part of the maintenance labor.

On the other hand, the Railroad has furnished the transportation over its line for the materials incorporated in these lines and the men performing the construction work. It has also permitted the telegraph lines to be placed on its right-of-way. The Telegraph Company, under this contract, has set apart certain of its wires for exclusive railroad use, and has the privilege of placing in these telegraph lines as many wires as it may need for its own commercial business.

The two companies share the labor cost of maintenance. They also share the cost of telegraph operator service at the railroad offices where commercial telegrams are handled. At some stations the railroad company pays the operator, who also acts as the agent of the telegraph company, and at other stations the operator is paid by the telegraph company and takes care of the railroad work. These arrangements are generally at small stations where one man can handle all the work for both companies.

I might say parenthetically there that the question of who shall furnish the operator depends upon the volume of the telegraph business handled during the preceding year. The growth of the volume of telegraph business, the more the obligation of the telegraph company to furnish a man.

Neither company makes any charge against the other for any of these reciprocal services or privileges. That the mutual advantages accruing to the parties are reasonably well balanced must be apparent from the fact that these arrangements have so long endured and still remain in effect.

We have never conceived that there was anything in the slightest degree inimical to the public interest in this joint enterprise of providing facilities essential to business of both parties, or in the exchange of services involved therein. On the contrary it seems very clearly to be in the public interest because it makes very definitely for economy in oper-

ation in both the railroad and the telegraph business. If each had to provide these necessary facilities separately and without the other's cooperation in this fashion, it would obviously be more costly for each. These reciprocal arrangements promote efficiency in operation as well as economy. Efficiency and economy in operation have long been recognized as objects to be sought after in the public interest.

Perhaps more important in its effect is the fact that were it not for these reciprocal and cooperative contracts, there would be a great many small railroad stations, serving the lesser communities, where no telegraph service would be available. There isn't enough telegraph business to warrant any company in maintaining an independent office at many of these stations, but where the railroad has an agent or operator on duty, he is available to handle the occasional messages received or for delivery.

The availability of this service is a great public convenience at a very large number of stations and must certainly be considered in the public interest. Laying aside any question of constitutional right or of statutory power, to interrupt or abrogate these long continued arrangements seems to us to be entirely unnecessary and undesirable in the public interest.

As I have listened to these proceedings these two days, I have not been at all sure that it was the intention of those who drafted this code to have it apply to a situation such as

I have outlined. It seemed to me very probably that in framing the language of paragraphs 2(a) and 2(e) of Article VII and Sections 3 and 7 of the same article, they were not aiming at situations of this kind at all. Nevertheless, should this proposed code go into effect as drafted, it might be confined so as to require under these provisions that the reciprocal arrangements of which I have spoken must be discontinued. Such action would truly create a most chaotic condition and a very considerable increase in operating expense of both parties.

Because properties and operations of the two are so closely and intricately connected, if it became necessary for each to set up a cash charge against the other for every privilege, use of facility and service performed for the other, all in accordance with published schedules, the very essence of these contracts would be destroyed. In addition to adversely affecting the railroad industry, this would result in higher telegraphic cost, poorer telegraphic service and less employment in the telegraph industry - results quite the contrary to those desired by the N. R. A.

The contractual arrangements of which I speak have been recognized heretofore by Congress as not being inimical to the public interest. In paragraph (7) of Section 1 of the Interstate Commerce Act, exceptions are found permitting the exchange of so-called free service between railroads and tele-

graph, telephone and cable companies. The propriety of this provision of the law and of this class of railroad-telegraph contracts has been discussed and approved by the Interstate Commerce Commission and also by the Supreme Court of the United States. (See Postal Telegraph Company v. Tonopah Railroad Company, 342 U. S. 471.)

The Communications Act of 1934, now before Congress, contains like recognition of these practices. It follows that any code adopted for the Telegraph Industry should likewise include affirmative recognition of the validity of the practices carried on under these contracts. While the telegraph companies alone would be subject to the code and the railroads not be covered thereby, yet in the manner I have endeavored to point out, the railroad industry would be extensively affected by the proposed code provisions as they now stand, although the N. I. R. A. was not intended to apply and does not apply to railroads.

I am satisfied that what I have said reflects correctly, in a general sense, the situation which exists on a great many--in fact on most--of the important railroads of the country. I know it exists on the Chicago, St. Paul, Minneapolis and Omaha Railway, which company I represent here as well as the North Western. The contracts of these two companies are not identical but are quite similar. I know from general knowledge that contracts with some other railroads are of the

same general nature.

I might say in application of that that I have seen copies of several, and I gained the very definite impression that they are all upon the same general lines and include to a greater or less degree, the characterization of an exchange service, and while the exact adjustment and terms in each case differ somewhat from others, I do not know of any two that are exactly identical, and yet they are all of the same general character and quite similar.

Therefore, in order that you may have a concrete suggestion before you, I submit the following as a tentative draft of an additional paragraph to be inserted at the end of Article X of the proposed code:

Existing and future contracts between members of the industry and common carriers subject to the Interstate Commerce Act by means of which facilities for transmitting telegraphic communications are maintained and operated both for use in the public telegraph business and in the business or operation of such other common carriers shall be lawful and unaffected by the provisions of this Code, and none of its provisions shall be construed as prohibiting the exchange of services, the extending of privileges, services or facilities, exclusive or otherwise, or the carrying out of mutual arrangements, between the parties to any such contract or contracts, anything in this code to the contrary notwithstanding. Nor shall any provision

of this code be construed so as to conflict with any provision of the Interstate Commerce Act or other existing Act of Congress.

In submitting this, I ask that it be considered as tentative only, and in explanation of that I want to say that I came down here and appeared yesterday for the first time and had known nothing of this proceeding up to that time and had only seen the proposed code that is now before you, the day before, so that I did not have time to consult with our people or with other railroads in making this suggestion, but I thought that you would like probably to have something in concrete form even though it might be of a tentative nature.

I would like to ask if I may be permitted that within such time as the Administrator may allow, I would say probably 10 days to 2 weeks, if that is permissible, that I may be allowed to submit a suggestion if that is felt desirable, a revised suggestion, and to submit a brief.

Deputy Peebles: You may. At the end of the hearing there will be a definite time announced in which briefs may be filed; probably a week or ten days, and I would be very glad to have you submit one.

While I appear on behalf of but two railroads, I wish to advise you that before leaving Chicago on Tuesday, May 15th, I inquired of the lawyers representing seven of the larger railroad systems having their general offices at Chicago and

found that up to that time these specific provisions of this proposed code had not come to the attention of any of them. By that I do not mean to say that they did not know of the code pending in the telegraph business. Whether they did or did not, I do not know. I imagine most of them have probably seen something in the press about it, and had a general impression that there was a proceeding of this character going on, but I found that none of them have seen the exact phraseology which is before you now, or knew anything about the details of its provisions, any more than I did before I received it on Monday.

These gentlemen expressed a lively interest in the subject and asked that I request in their behalf that they might have the privilege of appearing at a later hearing, if one is to be held, or if not that they be permitted to file written statements and briefs within a reasonable time to be fixed by the Deputy Administrator. I make such request at this time on behalf of these Chicago lines and I would like also, if I may be permitted, to make a similar request on behalf of a number of other western railroads whose representatives were not seen by me and whom I did not have the opportunity to make inquiries of, because I believe that these other lines will also be similarly interested, and I would like to have extended to them, whether orally or in writing, if they should desire.

Deputy Peebles: I would like you to advise them to file

briefs and to file twelve copies of each brief so that it may be handled expeditiously here through the various advisory boards. That applies to any railroad that you may care to contact. We will be glad to have you do so.

Mr. Morehouse: Very well.

Deputy Peebles: Have you finished your statement?

Mr. Morehouse: Yes, sir

Deputy Peebles: There are a few questions that I would like to ask you before you leave.

I take it from your statement that the contract with the telegraph companies which you have testified about, does not involve any money consideration, but is simply an exchange of services.

Am I right on that?

Mr. Morehouse: That is it exactly, Mr. Administrator.

Deputy Peebles: What specific paragraph in the present proposed Code do you think prevents a continuance of that?

Mr. Morehouse: I mentioned in my statement, paragraphs 2 (a) and 2 (e) of Section 7. 2 (a) provides that "immediately upon the effective date of this code each member of the industry shall file with the Interstate Commerce Commission and with the Code Authority, schedules showing all of its rates and charges for the transmission of telegraphic communications, for rental of telegraphic facilities, equipment and appliances, and for all other services performed or uses allowed by it which are inci-

dental to or connected with telegraphic communications, between different points on its own lines and between points on its own lines and those on the lines of other members of the industry when a joint rate has been established," etc.

Then there is the beginning of the second sentence below:

2 "The schedules printed as aforesaid by any member of the industry shall plainly state the places between which telegraphic communications will be transmitted, and shall contain the classification of telegraphic service, and shall also state separately rentals of facilities and equipment, charges for delivery, and all other charges which are not included in the rates and charges for transmission service, and all charges for privileges or facilities granted or allowed, and all rules and regulations which shall in any wise change or affect or determine any part o. the aggregate of such aforesaid rates and charges or the value of the service rendered to the user thereof."

I stated in my written statement that I had some doubt about whether it was intended by these provisions to reach contract situation of the kind I have described, and yet you will observe that language is very broad, and it could be taken and seized upon and urged that every service, every facility in connection with the maintenance of that telegraph line on the railroad's right o way that was made available to the railway company by the telegraph company would have to be cover-

ed by a published printed schedule, and that it would be unlawful for the telegraph company to permit any of those privileges or uses unless it did have every one of those items shown and a specific charge set up in the printed schedule, and the uses of the railroad of telegraphic systems of that kind are so varied and in many respects so different from the uses made by the ordinary commercial user that it would be a very difficult and intricate thing to set up a schedule in the first place, and in the next place if you set one up it would involve an immense amount of accounting and extra work which is not now required, and all to no purpose as we see it.

That is the way in which I thought that provision, though possibly and probably it seemed to be not intended to reach this contract situation, yet after it becomes a law, a person takes it up and looks at it, and says, "Now, what does this mean?"

It might very well be urged, it seemed to me that it was intended to apply, to the contracts about which I am talking unless some general clause is put into the clause which makes the contrary intention perfectly apparent, and that was the reason for my suggesting such a clause.

There is no need to read the other provisions, but in the same way, upon reading the ones that I referred to in my statement, you will see that it could be urged with considerable force if those provisions stood just as they now are, without

any later qualifying clause, that they were intended to apply to the railroad contract situations the same as to all other situations.

Deputy Peebles: What is the advantage to the railroad of an exclusive contract? Suppose you had a contract for such privileges, such as you have mentioned, but suppose it was in no sense an exclusive contract? Would you be in any better or worse position?

Mr. Morehouse: Well, I would say offhand that the exclusive features of the contract are primarily for the benefit of the telegraph company, and yet I will say this also, that had it not been for those exclusive features I doubt if the contracts would have been in their present form. They were something in the nature of an inducement in the beginning to offset the obligation of the telegraph company to extend its line wherever the railroad built a mile of railroad, bearing in mind that that means branch lines, light traffic lines, as well as heavy traffic lines, and lines in regions of dense population.

Take our own railroad for instance. We extend through a lot of territory where the population is very sparse. We have a line of railroad in Wyoming extending from the eastern line of the state to a point possibly 75 or 80 miles from the western line of the state, and as you know the population there is very light. The stations are not so close together, of

course, but the amount of telegraph business out there would not be very much of an inducement for any telegraph company, as I see it.

Deputy Peebles: Why does the telegraph company build along that line then?

Mr. Morehouse: I don't know that I can answer for the telegraph company, but it seems to me that in the beginning the telegraph companies were like the railroads. They were in the development stage. The country itself was in the development stage, and these railroad lines were constantly pushing out into new territory, and encouraging the movement of the population out into that territory. Many of the railroad lines, when they were first built, could not be justified on an economic basis what the immediate results would be, but they recognized that by building out there, the population would follow the railroads, and the country would be built up, and that they would get the business by reason of their being there, and apparently the telegraph companies went along with that idea in their business, and the two developed together, and helped develop the country and developed with the country, and so far as the truth of it is concerned, I think our railroad at least would consider that this is a mutual contract and a contract of a reciprocal nature, each party agreeing to do certain things for the other in consideration of what the other will do for him, and there is a certain

amount of mutuality there that should be respected, it seems to me, by both parties to the contract, and that would include this exclusive feature along with every other term and provision of the contract.

Deputy Peebles: I am still not clear as to exactly what benefits the railroad gets from the exclusive contract that they would not equally get out of a non-exclusive contract.

Mr. Morehouse: Well, I think it might be said very clearly that it would be to the benefit of the railroad to have their public telegraph service at all of the stations on its line.

Deputy Peebles: Could it not have that under a non-exclusive contract?

Mr. Morehouse: I think it would be very difficult to get that under a non-exclusive contract, or it would have been very difficult in the beginning, at least and I think it would be now, because there are so many of these light stations, light traffic.

Deputy Peebles: In other words, this is very beneficial to the railroad company, and possibly expensive to the telegraph company.

Mr. Morehouse: No, I would not say that. I think it is a benefit to the both of them. I said before that I think the exclusive feature is considered to be primarily for the benefit of the telegraph company. I do not think the railway, in

other words, would have insisted on putting that exclusive feature in the contract.

Deputy Peebles: Mr. Scott wants to ask you a question.

Mr. Scott: In the case of the contract of your particular rail carrier, with the Western Union, neither one of the parties pays money for the services rendered to the other, does it?

Mr. Morehouse: No, they do not.

Mr. Scott: It is a matter of mutual transfer of services.

Mr. Morehouse: That is correct, except to this extent. I answered that question in this way before, but there should be this qualification, perhaps, -- for off line telegraph business -- that is to say, the sending of messages to points off the line of the railway, if the volume of that business gets above a certain amount, then there is a cash consideration in a year's time.

Mr. Scott: But the majority of the services rendered by your company for the benefit of the Western Union are not paid for in money.

Mr. Morehouse: That is correct.

Mr. Scott: What is the practice of your company as to including such services within their schedules and tariffs they file with the Interstate Commerce Commission?

Mr. Morehouse: They do not include them.

Mr. Scott: Is that the established practice of the Com-

mission not to require them?

Mr. Morehouse: Yes.

Mr. Scott: This language in Section 2 that you criticise is the language of the Interstate Commerce Act.

Mr. Morehouse: I understand that, but you will also find in the Interstate Commerce Act in paragraph 7 of Section 1, specific provisions authorizing the exchange of services and transportation between telegraph, telephone and cable companies and railroads.

Mr. Scott: If that were included in this Code, would that remove your objection, -- a substantially similar provision?

Mr. Morehouse: The same effect is what I have endeavored to bring about through the suggestion that I made here today.

Mr. Scott: You go away beyond that in your suggestion. If the language of the Interstate Commerce Act permitting exchange of services for other than money, and excluding those from tariffs and schedules to be filed, were inserted, would that cure your objection?

Mr. Morehouse: I doubt it: you could take the exact language of the Interstate Commerce Act and put it into this Code.

Mr. Scott: Something substantially similar to that.

Mr. Morehouse (continuing): And have it harmonize, and that is why I tried to work out something that harmonized more

nearly with the Code itself, so as to make it a more complete and balanced provision.

Mr. Scott: Would you mind thinking along the lines I have just suggested, and include your suggestion or conclusion in the brief you wish to file?

Mr. Morehouse: I would be glad to do it. As I said before, I put in this suggestion on very short notice, and I would be very happy to proceed along the line you suggest.

Deputy Peebles: Thank you. Mr. Thomas F. Littlepage, of the Rock Island Railroad.

Will you please state your full name and representation for the purpose of the record?

STATEMENT OF MR. THOMAS F. LITTLEPAGE, ATTORNEY FOR THE ROCK ISLAND RAILROAD, WASHINGTON.

Mr. Littlepage: Mr. Deputy Administrator, I just want to use about two minutes. I am the attorney for the Rock Island Railroad in Washington. I think you stated to Mr. Morehouse that opportunity would be given to file briefs.

Deputy Peebles: That is correct.

Mr. Littlepage: That is primarily what I came down here for, because we had very short notice of this.

I might say, Mr. Deputy Administrator, that the brief which we will file will be devoted very largely to a discussion of various sections under Article VII which will show the contracts which the Rock Island Railroad has had for about 65

years with the telegraph company, and that it will show that those contracts have been mutually beneficial to the companies and satisfactory to the public, and that any code provision which changes those contracts will not be to the interest of either of the companies or the public.

I came primarily, as I said, to ask permission to file such a brief, and I understand that is going to be done.

That statement I made generally will be encompassed in this brief, and it will be a strenuous objection to any code provision which disrupts this arrangement, and the reasons are as I have stated, that we do not believe that it will be to the benefit of either of the companies involved or the public.

I do not know whether I can answer any questions you want to ask, but if you have any, and I can, I will; and if not, I wil tell you why.

Mr. Scott: Wherein, in your opinion, is the exclusive part of this contract of benefit to the railroad companies?

Mr. Littlepage: Simply for this reason. Telegraph lines run all over the country. They have got to pass little villages and little hamlets in order to get some place else. The railroad companies have their section crews taking care of the railroads. They can take care of the telegraph lines and the poles at very little expense to the railroad company, which would cost the telegraph company if they undertook to do

that separately, ten times as much money. Therefore the telegraph company recognizes that, and for what the telegraph company gives to a railroad company certain uses, certain privileges, for this compensation, and the railroad company gives them the exclusive right in their stations, and the telegraph companies have been many years building this up, and it has been built up in many towns to where today some competing company could come in and benefit by the work which the telegraph company and the railroad companies been building up for years, which we contend is not fair.

We contend that the railroad company, because of the fact that it has its crews out there, up and down the railroad ever day, can take care of broken lines and broken poles, and do repair work, and maintain that telegraph line at much less expense, and if the telegraph company therefore is able or willing to give the railroad company compensation in the transmission of messages, which it has done, and we feel that that contractual arrangement is cheaper and is better for the public, and it costs the public less money, it costs the railroad company less money, and it costs the telegraph company less money, and as a result of that, we think that the exclusive contract is entirely fair.

Where the service has been built up to where it is on a paying basis, we do not believe that any competitor has the right to come in there and disrupt that, because we do not be-

lieve it will benefit anybody. Frankly, that is the reason

Mr. Scott: Your answer shows that it is beneficial to the telegraph company.

Mr. Littlepage: Yes, sir; and to the railroad. We think it is beneficial to both, and we think they are entitled to that benefit.

Mr. Scott: Couldn't that same thing be done without the exclusive feature in the contract?

Mr. Littlepage: I don't think so. I don't think it could. I don't represent the telegraph company, and never had the pleasure of meeting any of the gentlemen until I heard them here yesterday, and I do not represent them. I am speaking largely from long experience, that anybody knows that goes up and down telegraph lines and railroad lines through the country. A telegraph company obviously is not going to tap a telegraph line and put service at every little hamlet in this country unless they could do that at a very cheap expense. It is to the benefit of the railroad and to the benefit of the telegraph company, because it may build up business. They can speak for themselves on that, but I think that the exclusive contract is a very important feature, and I think it is fair.

Mr. Scott: You still have not shown any reason, but let us leave that for your brief.

Mr. Littlepage: Well, the reason I think is the common

inherent fairness of a service which a situation has come about-
ed up, but I would be very glad to amplify it in a brief, and
I am sorry that I can not make myself clear.

Deputy Peebles: Just a moment. You say that section hands and so forth replace poles and replace wires?

Mr. Littlepage: Sure: They do the repair work in many instances under these contracts. I do not know if they do it everywhere, but I know many places where they do.

Deputy Peebles: Do you consider section hands capable of repair telegraph wires?

Mr. Littlepage: Certainly. There may be some things that they can not do, but the principal thing that happens is the breakage of poles, and the snapping of wires, which certainly in a section crew there is somebody that has gumption enough to piece some wires together, and that is the principal thing. It does not take much skill for that.

Deputy Peebles: The question is asked, do you know whether they pay the prevailing rates under the Railroad Act to those people when they perform that type of work?

Mr. Littlepage: That is a part o their regular duty they are doing all along all the time. They do not give them any special extra compensation for that. They pay them good wages. The railroad companies certainly have taken care of their employees as well as any organizations that I know of. I know there are plenty of them anxious to get the jobs.

Deputy Peebles: Thank you, Mr. Littlepage. Is Mr. J. A. Miller, of the American Short Line Railroad Association here?

A Voice: Mr. Miller informed me yesterday that he merely wished to file a brief.

Deputy Peebles: Mr. Elisha Hanson, of the American Newspaper Publishers' Association.

STATEMENT OF MR. ELISHA HANSON, ATTORNEY FOR AMERICAN NEWSPAPER PUBLISHERS' ASSOCIATION.

Mr. Hanson: Mr. Administrator, my name is Elisha Hanson, and I am the attorney for the American Newspaper Publishers' Association, an association which was formed in 1887, and the membership of which includes the publishers of some 425 to 450 daily newspapers of the United States.

The members of this Association of publishers have publications which range in circulation from under 5,000 copies daily to over a million copies daily, embraced in their membership, and they are publishers of the newspapers which take in more than 80 per cent of the total daily circulation of the United States, which is some 35,000,000 of copies a day.

They are very large users of telegraph service. They get that service, as well as cable service, in three ways: Open telegraph service, leased wire service from bureaus to offices, and from offices to bureaus; and press association service, which in turn involves leased wire service.

5 I do not speak for the press associations. I believe they are going to be represented, and they can tell you the details of their service.

The association which I represent has been asked by certain parties to this proceeding to oppose this code, and by another party to support the code with an amendment which was proffered to us, I believe, on Monday afternoon or Tuesday afternoon.

Unfortunately we can not support the code. We think that it is entirely improper to go into the regulatory fields. We have no objection whatsoever if the U. S. G. desires to have a code of hours, wages, and working conditions for the telegraph companies. We are operating under a simple code of that code ourselves. But we do think that with the question of services involved, and with one Federal agency and from 40 to 45 State agencies and the regulating of these companies now, that we should not have a competition between two Federal agencies as to which shall regulate them, because in the last analysis, while we are not interested in any controversy between these companies over their own business, we are interested in the costs of these controversies, because we are a part of those who pay the bill.

What we want is the best service that each and every one of them has to offer, at a just and reasonable and fair rate, and what we do not want is to be denied the improvement of ser-

vice, such improvement as has come during the past, and such as are in the offing now, simply because those improvements may affect the competitive condition of one company or the other.

I have some figures here to show some of the proportionate costs of service to newspapers. I do not have the figures for the entire cost for the Association which I represent, but one newspaper, which is not the largest nor by any means the smallest but is a representative daily newspaper of a large city in the United States, in the month of April, paid out for its own leased wire service, that is, between its Washington bureau and its home office, $736. During the same month it paid to the telegraph companies for open wire service on press messages $6,280, and during the same month it paid to one press association whose service it uses $4,341, and to another press association $2,000.

The month of April was not a particularly heavy month nor a particularly light month, but that means to the press association and to the wire services, the telegraph companies, it pays appraximately $180,000 a year, of which some 50 per cent is for open wire service, and by open wire service I mean the press messages which come in the nature of queries from correspondents of the newspaper in some 1800 cities and towns in the United States, and answers from the publisher to those correspondents, and the press stories which come over the wire to

the publisher.

Of course a great proportion of the amount which is paid to the press association is the assessment or the charge for the wire service which they maintain, and which they in turn obtain from the telegraph companies, in order to serve the newspapers.

I have listened to a number of the statements which have been made here at this hearing, and as I say, I am somewhat familiar with N. R. A. Code procedure, having had a few months experience of it myself in connection with the Daily Newspaper Code, and I know some of the difficulties first of obtaining a Code and second of administering a code after the unfortunate gets it (laughter).

At the present time the Interstate Commerce Commission has jurisdiction over the services, the practices, and the rates of telegraph companies. If there be any telegraph service which is rendered over which the Interstate Commerce Commission has failed to assume jurisdiction, then I do not think it is up to the N. R. A. to call to the attention of that agency of the government its laxness of the service, but even if the Interstate Commerce Commission has failed, we are up against this practical situation.

The Communications Bill has passed the Senate. It is an Administration measure, and while in ordinary times I would not be foolish enough to stand here and predict what Congress is

likely to do on any piece of legislation, these are not ordinary times, and I think it is safe to venture a statement that that measure in substantially the same form in which it passed the Senate, will be the law of the land within a very few weeks at the most.

Now, then, a hasty analysis of it shows that the Communications Commission when it is created, and I am assuming that it soon will be created, will have complete jurisdiction over services, charges and practices of telegraph companies.

Bishop file.

The bill provides that such companies must file with the Commission and keep open to public inspection all schedules of services and rates, in Section 203(a).

It further provides that until they have filed with the Commission such schedules the companies cannot render any telegraph service whatsoever of any kind of description. It still further provides that all charges, practices, classifications and regulations must be just and reasonable, and the Commission can pass on the question of just and reasonable, and in addition the measure prohibits discrimination between users of the same class, and further it provides for the very broad scope of service, specifically defining classes of service into various kinds, types and descriptions and leaving with the Commission the right to create new and additional classes as the service may require.

Now, as I say, we have not any particular objection to the N. R. A. in its own individual field. If there were no regulation by the Interstate Commerce Commission now and if there were not to be regulation by the Federal Communications Commission, I probably would not be here today to urge you to strike all of Article VII out of this code. But merely urge you to amend it so as to clarify it in some particulars. I am not asking you to strike out merely because it may affect the press of the company because we do not want any special privilege from you, but you do now have regulation and you have

another form ofregulation which possibly is even more complete than what you have now in the immediate offing, and as I say, we do not want to pay the bills for these companies while you gentlemen are contesting with either the Interstate Commerce Commission or the Federal Communications Commission a question of jurisdiction, or while they are contesting in the one place one or the other of you have jurisdiction, because we all know that the costs ultimately go over to the consumers.

Our whole interest in this is one of service. We have everything of good quality service that these people have to offer that we can use at a reasonable rate, and that is all, and we do not want to be involved in any controversy as to whether or not we shall have a teletypewriter in our office or that we cannot have it because it happens to affect somebody else adversely, or whether we cannot have this because it is new and it may put somebody out of business, because it is just an unfortunate thing, but as developments come along, old things have to give up and step aside, and we want everything that they can offer from now on just as we have had it in the past. We have paid it. We have one of the largest contributors to their exchequor each year, and we expect to continue to pay them for it, and we have no objection to a proper regulation, but we do not want to be the man in the middle while the two regulatory bodies are fighting out an issue.

Thank you.

Deputy Peebles: Just a second.

Mr. Scott: How do press rates compare to general public rates?

Mr. Hanson: I have not the slightest idea how they compare with the general public rates except that they ar· lower, and they are lower, as I understand it, solely on the question of volume of business that is offered. They run into millions of dollars a year.

As I say, here is one newspaper of not the largest size and not the smallest size, slightly above medium size, whose bill is $180,000 a year largely for telegraph rates, which would indicate that with some 2,000 newspapers in the country what it runs into in money.

Daily newspapers, I speak of.

Mr. Scott: That is all.

Deputy Peebles: Thank you, Mr. Hanson.

Joseph V. Connolly of the International News Service.

Mr. George P. Hargreaves: He is not present, but I will represent him.

Deputy Peebles: Will Mr. Connolly appearlater?

Mr. Hargreaves: He was here yesterday. He will not appear.

Deputy Peebles: Will you identify yourself for the purpose of the record?

Mr. Hargreaves: Yes.

STATEMENT OF MR. GEORGE P. HARGREAVES

Business Manager, International News Service and Universal Service.

Mr. Hargreaves: Mr. Administrator, my name is George P. Hargreaves, business manager of the International News Service and the Universal Service.

The wording of Section 4, Article VII, as it stands, we believe, takes away from the press the wire rate basis on which they have been operating for many years. It is our proposal that this section be amended by adding the following words.

"This section shall not apply to any rates of services furnished by communications companies to the press."

Briefly, here is our situation:

International News Service serves a large number of American afternoon newspapers with a daily news report delivered by leased wire.

Universal Service serves a large number of morning newspapers with a nightly news report delivered by leased wire.

International News Service also serves a large number of newspapers both in Europe and in the Orient with a daily news report delivered by cable.

Both leased wires and cables have, in the history of I. N. S., for the past 25 years, been paid for at press rates.

Both these services also gather a very large volume of

news by commercial company wires and by cable and wireless for distribution over their leased wires. This transmission has also been paid for on a press rate basis long established by the commercial companies.

The costs of leased wires and of news collection by overhead wires have always been the basis of our service rates to newspapers. We have made contracts with client papers, many of them for long periods, on the basis of these press rates.

To change the rate schedules on wires so that our costs would be increased would lay a great additional financial burden both on us and on the individual newspapers we serve. Many of our clients during the past three years have had great difficulty in paying current charges.

Any attempt to increase these charges would make it impossible for many of the client papers to pay them and would result either in the financial crippling of the papers to a point where they would have to suspend or they would have to reduce the volume of their news report so greatly that the value to the reader would be greatly curtailed with an inevitable loss in circulation.

A rough computation shows that if International News Service and Universal Service were deprived of the press rate on leased wires and were forced to pay for them on a common commercial basis, it would increase our present costs by $300,000 a year.

If our services were deprived of the press rate on telegraph tolls, cables and wireless, our costs, we estimate, would be increased by $450,000 a year or an aggregate increase of nearly three-quarters of a million dollars year.

Neither our two services nor our client newspapers could assume this additional burden in the present condition of the newspaper business.

To impose this burden would irr eparably cripple the news service and the newspapers.

Deputy Peebles: Thank you very much.

Will you tell me if Mr. Geoffry Konta is going to appear also?

Mr. Hargreaves: No, sir; he was here yesterday but he left the matter with me.

Deputy Peebles: Thank you very much.

Mr. H. M. Bittner, representing the Hearst Newspapers.

Mr. Hargreaves: I believe Mr. Bittner is not to be here.

Mr. Hanson: Mr. Administration, Mr. Bittner was not here, but yesterday I was given the information that exclusive of their leased wire services, the Hearst Newspapers in 1932 paid out $534,000 for open wire service, and I thought that might be of value to the record.

Depty Peebles: It is your understanding that Mr. Bittner will not appear?

Mr. Hanson: It is my understanding that he will not be here today.

Deputy Peebles: Mr. Thomas E. McIntegot of the General News Bureau, Inc.

(No response.)

Deputy Peebles: Mr. Kenneth C. Hogate of the Financial Press Companies of America.

Will you identify yourself, your name and connection, for purposes of the record.

STATEMENT OF MR. KENNETH C. HOGATE

President, Financial Press Companies of America.

Mr. Hogate: Mr. Administrator, my name is K. C. Hogate, president of the Financial Press Companies of America. I am appearing in reference to Section 6 of Article VII which is the article governing trade practices.

Inbrief, Section 6 prohibits any member of the industry from entering into a lease of a wire which permits the use of such wire in telegraphic communication by any person or corporation other than the leasee thereof. Exception is made for wires, circuits or services furnished to the United States or to the Press.

The companies which I represent are large users of the wire facilities of the telegraph and telephone companies. While it is our conviction that an interpretation of this section would exclude us from its provisions, we nevertheless

believe that slight changes in terminology could be made which could make the intention to effect such exclusion even clearer.

Essentially, that portion of our activities for which we believe clarification of this section is advisable has to do with a news service rendered by our subsidiary companies, of which Dow, Jones & Company, Inc., of New York, is best known. Dow, Jones operates a financial, business and commercial news service which is delivered to clients over leased wires by means of teletypewriters, printers and similar devices. Dow, Jones leases these wires from the telegraph or telephone companies. The receiving devices in some instances are leased from these companies; in others they are owned by Dow, Jones & Company.

A question that might be raised is whether the fact that a leased wire which runs from the office of Dow, Jones & Company to a client over which is transmitted a news service to the client--the lease of the wire being in the name of Dow, Jones--constitutes use of the wire by ther than the lessee. The client does not have access to the wire but is on a one-way circuit. There are no sending facilities at the client's end. His only possible use of the wire is that he is using the news service which is delivered to him by means of the wire and the printing equipment.

This services does not divert the traffic from the wire

companies' regular open circuits. If it should be held that the client is using the wire as defined in the code, it would appear that a national business established for 40 years and employing many men would be crushed out of business through a fair practice provision in a code made for another industry.

To avert any possible confusion in this regard, we suggest the insertion of the words "except in one way transmission" following the word "thereof" in the fifth line of Section 6, so that this section reads as follows:

"No member of the industry shall enter into any lease of a wire, or provide any leased wire service, under existing lease or otherwise, which permits the use of such wire in telegraphic communication by any person or corporation other than the lessee thereof except in one way transmission, . . "

Further, in as much as it appears to be the clear intention of this section to exempt the press, we propose that definition of the word "Press" be supplemented by inserting the words "or to established news services" at the end of the second paragraph of Section 6, so that this section reads as follows:

"This section shall not apply to interchange of wire facilities between members of the industry, or to wires, circuits or services furnished to the United States, or to any of its agencies, or to the Press, or to established news services."

In making these two suggestions, we have limited them to

the minimum we believe essential for the preservation of our interests.

We recognize that broader proposals have been made and will be made for modifying this section, and to these we are interposing no objection.

Deputy Insull: E. J. Randau, representing the United Press Association.

STATEMENT OF MR. CLEM J. RANDAU

GENERAL BUSINESS MANAGER, UNITED PRESS

Mr. Randau: Mr. Deputy, I have a very brief statement that I should like to get into the record.

The United Press understands that the proposed telegraph communications code is not intended to eliminate press rates, now enjoyed by newspapers and press associations, but the draft of the code, particularly section 4 of article VII, as now written, cannot be otherwise interpreted, according to our general counsel, than to eliminate the press-rate differential.

Hence the management of the United Press feels it is necessary to insert a specific exception in section 4 of article VII, similar to that in section 6 of article VII, which excepts the United States, or any of its agencies, and the press.

The suggested change will merely make the language of the code conform to the announced intention of the Recovery Administration. It will eliminate all doubt and danger of future misinterpretation.

The statement given out by Administrator Johnson to the effect that the code was not intended to affect the present relationship between telegraph communications companies and the press is hardly sufficient, in our opinion. Relationship is too broad a word.

is too broad a word. We hope to be given positive assurance that nothing in the proposed code will be permitted to lay the groundwork for any increase in rates for any class of service to the press.

We make this request, Mr. Administrator, because accurate estimates show that elimination of press rates would add at least ten million dollars cost annually to the newspaper industry, which sum cannot be absorbed without serious and possibly fatal injury to many newspapers, and press associations.

We believe it is not the intention of the Administration to hamper distribution of news and intelligence to the public, but failure in this instance to make the code language specific could only result in serious curtailment of domestic and foreign news distribution.

There is one further point, and that is in connection with the press rates as applied to domestic business. The press associations and newspapers, with the help of the Administration, have long worked to get price rates from the cable and radio companies, with the cooperation of the American Government and various foreign governments, and if a precedent would be set in this country, eliminating press rates, it is only natural that the foreign exchange of news would be hampered, if not destroyed, at the differential rates.

That is all. Thank you.

Deputy Peebles: No questions; thank you very much.

You might tell us, before you leave, if Mr. Patterson and Mr. Bailey want to appear.

Mr. Randau: No, they will not appear.

Deputy Peebles: They will not appear for the United Press?

Mr. Randau: No.

Deputy Peebles: Mr. R. E. Desvernine, on behalf of the Association of Stock Exchange Firms, New York, and on behalf of the code authority for the code of fair competition for stock exchange firms.

STATEMENT OF MR. R. E. DESVERNINE

ON BEHALF OF THE ASSOCIATION OF STOCK EXCHANGE FIRMS, NEW YORK; AND ON BEHALF OF THE CODE AUTHORITY FOR THE CODE OF FAIR COMPETITION FOR STOCK EXCHANGE FIRMS

Mr. Desvernine: Mr. Deputy Administrator, officials of the N. R. A., and members of the telegraph communications industry:

I appear on behalf of the Association of Stock Exchange Firms, New York, and also on behalf of the code authority of the code of fair competition for stock exchange firms. In both of these capacities I must protest against some of the fair practice regulations contained in the proposed telegraph communications industry code and their effect on the stock exchange business.

Also on behalf of the Code Authority for the Stock Exchange Firms Code I must specifically protest against the attempted intrusion by the proposed Telegraph Communications Industry Code in matters already delegated to the Stock Exchange Firms Code under the Executive Order of the President, dated November 4, 1933, approving that Code.

No statement should be necessary here that the Code Authority for the Stock Exhange Firms Code represents all members of that business throughout the country. It is not a local organization, and the Board of Administrators have been chosen with the purpose of representing the stock exchange firms throughout the country and not those of any particular section.

The Association of Stock Exhange Firms on whose behalf I am also appearing is a voluntary association of member firms of the New York Stock Exchange. It was organized on December 10, 1933, and presently has a membership of 544 firms out of 624 eligible firms. This association, therefore, represents approximately 87 per cent of the number of firms eligible for membership therein.

One of the reasons for our protests is that the definitions of the terms "Industry", "employer" and "employee" of the Telegraph Communications Industry Code may include wire operators employed by stock exchange firms. This is not an absolutely necessary interpretation of the Code as now drafted, but it is a possible interpretation and it is too important a matter to

leave to a question of what may or may not be finally held to be the proper interpretation. The true nature of the Stock Exchange Firms Code must, therefore, be fully considered.

The Stock Exchange Firms Code regulates the hours of employment and wage scale for the employees covered by that Code; and it governs <u>every person</u> employed by an employer engaged in the stock exchange business as defined in the Code. There are absolutely no exceptions. The hour andwage schedules established by that Code were fixed for all employees; and in determining what standards could as a practical matter be established, it was necessary to base the conclusions upon the labor conditions of all employees of all classes as long as they were employed by stock exchange firms. If different requirements arenow established for some particular class of employees either as to hours of work or rate of pay without giving consideration to the stock exchange business as a whole, the basis of the determination under that Code will be absolutely destroyed.

Furthermore, there is the practical difficulty under the N.R.A., that wire operators cannot now be taken from under the Stock Exchange Firms Code merely byestablishing different requirements for them in the Telegraph Communications Industry Code. The Stock Exchange Firms Code will still bind them as employees in the stock exchange business. The result of attempting to include such wire operators under the Telegraph Communications Industry Code will be the creation of a conflict between two

codes and the hampering of the operation of both codes. The only way that wire operators can be taken from under the Stock Exchange Firms Code or be given special treatment is through a change or amendment of the Stock Exchange Firms Code brought before the N.R.A. officials having jurisdiction of that Code and the employees thereunder.

At the time the Stock Exchange Firms Code was considered, special consideration was given to wire operators. Their representatives appeared and testified at the public hearings and the inclusion of such operators as employees under the Stock Exchange Firms Code without special treatment was therefore directly recognized as part of the N.R.A. control of the stock exchange business.

The reason that the Telegraph Communications Industry Code may conflict with these provisions of the Stock Exchange Firms Code is that the former code, generally speaking, covers persons engaged in the business of sending messages for compensation and defines as an employee in the business anyone engaged in the business for compensation who is not a member of the industry. This, without consideration of all of the surrounding circumstances and possible conflict with the Stock Exchange Firms Code, would probably include the wire operators of the stock exchange firms who are engaged in the business of sending messages as an incidental and necessary function of the stock exchange business and who are paid regular salaries as part of the recog-

sary organization and personnel of that business. It may not have been the intent of the proposed Code for the Telegraph Communications Industry that it would apply to wire operators covered by other existing codes. However, the present wording of the Code may be interpreted as attempting to cover the hours of labor and wages of wire operators regardless of the major business of their employers and whether or not they are covered by another code.

It is probable that in view of the definite provisions of the Stock Exchange Firms Code herein before discussed which apply to <u>all employees</u> engaged in that business, that the proposed Telegraph Communications Industry Code would be interpreted as not attempting to interfere with the jurisdiction of employees already covered by the Stock Exchange Firms Code. It is certainly reasonable to interpret codes presently adopted in any way possible to make them consistent with previously adopted codes. Such policy would make it necessary to interpret the Telegraph Communications Industry Code as not applying to wire operators, etc. employed by stock exchange firms under their Code.

As previously stated this matter is too important to leave to possible interpretation; and, as the language proposed for the Telegraph Communications Industry Code does not <u>require</u> the interpretation that I have suggested, it is probably not its intent. In order to avoid the confusion, however, the language

should be clarified. This could be done in several ways, one of which would be to add at the end and as a part of the definition of the term "Industry" in Article II the following provision:

"but shall not include such transmission, giving, furnishing, leasing or supplying by any one either an employer or an employee under the Code of Fair Competition for Stock Exchange Firms."

or another method might be to change the definition of the term "employer" also contained in Article II, so as to restrict it to persons, firms, etc. engaged as their major business in the "Industry" and restrict the definition of employees to all of the employees of such employers in the Industry. If this latter method is followed the term "Industry" would probably require some clarification to show that the sending of messages by stock exchange firms an incidental to their business, even though some compensation were received, would not make such stock exchange firms members of the Industry. Whichever method is followed is primarily a matter of policy for the Telegraph Communications Industry so long as it clearly prevents conflict and confusion with the Stock Exchange Firms Code

Apart from the questions of conflict in N.R.A. jurisdiction, the labor provisions in Article III of the Telegraph Communications Industry Code are entirely impractical if applied to wire operations in the stock exchange business. They could not be

complied with in anormally active market without disorganizing a large part of the stock exchange business. So much special knowledge is required of each wire operator employed in the stock exchange business as to many of the details of that business and of the practices of the office in which he works, that it is impossible to require any such operator to work only a definitely limited number of hours. He must stay until the day's work is done or impossible hardships will be placed upon the conduct of the business. It is practically impossible to have a sufficient number of trained substitutes acquainted with the details of the business of the partidar office and the day-to-day transactions to step inon a minute's notice and act as substitutes when the permitted eight hours of the regular wire operators have been completed. Wire operators for stock exchange firms must not only have such special knowledge but must also be generally experienced as operators and be extremely accurate. Errors in their transmission of orders or quotations would have serious consequences for it is absolutely essential that there be no mistakes whatsoever in such matters.

This was fully considered when the Stock Exchange Firms Code was adopted and provision was made therein for the payment of overtime when work beyond a certain time limit was required. This arrangement under the Stock Exchange Firms Code permits the flexible operation of Stock Exchange Firms which is absolutely requisite to the continuance of their business when active mar-

kets occur. This is a practical illustration of the reason why employees in the stock exchange business must be treated as a whole under a single code recognizing the peculiar fluctuating nature of the business and the need for flexible arrangements.

In addition to the above difficulties in regard to the labor provisions of the Code, the trading practices in Article VII, while not directly binding upon Stock Exchange Firms, may seriously interfere with the conduct of the stock exchange business. In an effort to prevent such interference I must protest against some of the trade practice provisions.

The sole and primary purpose of leasing wires by stock brokers is not to do a commercial telegraph business for profit or even to reduce the cost of messages, but only as a means and necessary instrument in the execution of sales and purchases of securities. The essence of thebusiness is the prompt execution of orders -- service. The stock broker is not attempting to furnish a facility as a favor, but rather to provide a facility to himself in attracting orders to himself.

Section 4 of said Article VII contains the provision that "no member of the Industry shall make, give or permit a rate to one or more users of any class of service discriminatory * * * against users of any <u>other</u> class of service." There might be some justification for a prohibition against discrimination when limited strictly to the same class of service; but when the restriction is applied to <u>all</u> classes of service the meaning of

the provision is not clear. It would seem to be a possible interpretation of Section 4 that <u>all</u> wire charges must be based on the same or similar rates, so that the large user would be subject to the same rate of charge as the small user and that possibly leased wires might have to be charged for at the same rate as though the wires were not leased but the charge based upon an estimate of the service furnished. The whole effect of this Section seems confused; because although different types of services would appear to justify different rates, it would seem extremely doubtful as to how determination could in many instances be made as to whether the different rates for such different services were in fact causing a burden or creating some discrimination against some of the other classes of business. This is, of course, primarily a problem for the Telegraph Communications Industry; but on behalf of the Association of Stock Exchange Firms and on behalf of the Code Authority of the Code for Stock Exchange Firms I must protest against any language being inserted in the Code for the Telegraph Communications Industry which would prevent stock exchange firms from leasing wires at lower rates than are required for occasional messages.

Also the provisions in this same Section 4 do not only restrict members of the Industry but apparently also restrict the use that stock exchange firms may make of their leased wires. This is because the restriction provides that the telegraph companies shall not <u>permit</u> rates discriminatory between users

of different classes of service. Stock exchange firms leasing wires frequently permit other firms to use their leased wires in exchange for service or business arrangements which cannot be reduced to matters of dollars and cents for comparison with rates charged for similar wire services. These arrangements have developed for many practical reasons. A stock exchange house having leased a wire may allow an investment banking house to use the wire free of charge, or on some inter-firm fee basis, if thestock exchange business that the investment banking house may obtain through the use of the wire is turned over to the firm granting it permission to use the wire. Similarly a stock exchange firm may allow its out of town correspondents to use such wire facilities in exchange for business or for the payment of some fee or commissions. The volume of business of such an individual correspondents does not justify the leasing of an individual direct wire; but permitting them to cut in on an existing wire enables thei r customers to receive a service of which they would otherwise be deprived. Also if the firm leasing the wire couldnot permit such correspondents to cut in, it might in many instances be forced to cancel its lease as unprofitable and not justified by its own volume of business.

All of these arrangements would possibly be open for criticism under the provisions of Section 4. In fact, it might be essential for stock exchange firms to discontinue any such arrangements in order to avoid possible violation of the Code. The telegraph companies in all of these cases get full payment for their wires; but if this extending wire facilities by lessee houses to other houses is prevented many customers throughout the country will be deprived of the efficiency in handling their purchases and sales of securities to which they are entitled and to which they have been accustomed. It would seem needless to emphasize the possible serious effect if, through some new rule, the entire system of leasing wires and communicating security orders between branch offices and correspondent firms or other firms engaged in a similar business were prevented.

The present system has been developed through much experience and forms a basic part of much of the security business of the country. It would not seem safe, under present conditions, to tamper with such a fundamental aspect of the financial business of the country without full and detailed consideration of exactly what existing arrangements would be prevented and what would not. The present language of Section 4 does not permit a clear understanding and it might, through the penalties imposed for violation of the Code, cause many houses to discontinue their present arrangements in order to

avoid possible liability for violation. The effect on the country stock exchange houses, could not be estimated.

The above objections made to Section 4 would probably be overcome if the Section were amended by adding at the end thereof the following provision:

"; but the provisions of this Section shall not prevent the leasing of wires at special rates, and shall not apply to any compensation between persons (including firms and corporations) whose offices or business premises are connected with such leased wire."

The provisions of Section 6 of Article VII will also undoubtedly prevent many of the existing practices regarding wires leased by Stock Exchange Firms. As previously pointed out, wires are frequently leased by stock exchange firms and the privileges of using such wires granted to other firms for adequate business reasons. To arbitrarily rule however that no privileges in respect of such wires should be granted to any person other than the lessee, will require the termination of many business arrangements of long standing and of important bearing on the conducting of financial transactions throughout the country. It will affect such relationships between Stock Exchange Firms even though the telegraph companies are themselves entirely satisfied with the arrangements and compensation that they receive for the use of the wires. If the houses leasing the wires cannot permit their correspondents or other

firms having business relations with them to use the wires which they lease, much of their business may be lost. Such business may be done locally and thus not only will the services of the stock exchange firms at the central exchange be rendered unnecessary but the use of any wire facilities will also probably be rendered unnecessary. This, of course, could not happen to any substantial degree without considerable corresponding loss of revenues to the telegraph companies.

The Code cannot destroy the basis on which many wires are leased and rental paid to the telegraph companies without jeopardizing that source of revenue which they now have. The business advantages which the lessee firms receive are of no consequence to the telegraph companies in so far as such companies receive adequate compensation for the granting of the lease of the wire facilities. The result of the present restrictions proposed in the Code for the Telegraph Communications Industry would very probably result in the termination of the leases of many wires with the consequent loss of the revenues to the telegraph companies of the rentals which they now receive from such leased wires.

A further effect of the proposed provision would probably be considerable liquidation of securities presently held in accounts of branch offices or correspondent firms dependent upon the existing wire facilities. If stock exchange firms throughout the country are forced to use only such private wires as

their business alone justifies, then they would, in many instances, have to close out their business and liquidate their accounts.

This is particularly true because there does not appear to be any ready substitute for the present wire system. Speed required for the delivery of messages on even normally active days does not generally permit the use of public wires with the consequent delay and confusion that would result in the delivery of messages between the telegraph company offices and the stock exchange firm's office. When messages are sent for dispatch by public wires, they must go through the regular routine of the telegraph office, and are or should be dispatched in the order of their receipt. This often causes delay in transmission, especially if there should be a rush or an accumulation of undispatched messages. Any delay in the execution of security orders is apt to result in loss due to the rapid fluctuation of the market. Almost immediate clearance is necessary market-wise. In some of the large offices orders can be received, executed and confirmation dispatched to the branch office or correspondent within a minute or two. This speed is necessary on active days and would be absolutely impossible over outside public wires. Furthermore, stock exchange firms must establish arrangements that will work should a large volume of business be required.

Also much of the present efficient system of wires would

not be maintained if the stock exchange firms could not expand or contract their wire service promptly according to their needs under the present arrangements additional wires can be obtained almost immediately, or if the volume of business falls off, existing wire arrangements can be released. If this were not possible, much of the wire business could not be done andnot only the stock exchange firms but the telegraph companies would be the losers. Because of the fluctuating nature of their business the stock exchange firms could not afford to engage many of their wires if they were required to take definite and rigid commitments that they would have to continue in slack times. If the proposed Code prevents the continuing of the present arrangements it will probably result in the curtailment of many of the leases of wires now existing unless some equally flexible arrangement is established. The prohibitions under the proposed draft of the Code did not seem to permit such flexibility.

There does not seem to be any reasonable justification for the prohibitions contained in the proposed Code nor can it be seen what the telegraph companies would lose if the lessees of wires were permitted to allow other persons to use their leased wires if such other persons were approved by the lessor company and were named in the lease or an annex to the lease. This would certainly seem to be true if the use of the leased wire h ad to be permitted only in connection with the business

of the firms so leasing such wires be ended in such leases.

The above objections in regard to said Section 6 would however probably be overcome if the first paragraph of said Section were amended to read as follows:

"Section 6. No member of the industry shall enter into any lease of a wire, or provide any leased wire service, under existing lease or otherwise, which will permit the use of such wire service in telegraphic communication by any persons other than persons (including firms and corporations) whose offices or business premises are, at the time of such use is permitted, connected by such private wire service, or which will permit the use of such wire service for messages or purposes which do not relate to the business of the person or persons whose offices or business premises are so then connected by wire service; nor shall any member of the industry permit any use of a leased wire, for compensation or otherwise, under existing lease or otherwise, which will result in giving to any user thereof, other than the persons whose offices or business premises are connected therewith, a rate or service more favorable than that which is afforded to other persons using or requiring substantially similar service."

Unless the proposed Code for the Telegraph Communications Industry is changed as above provided in it will cause a serious handicap to the conduct of the stock exchange business of the country, without any advantage or benefit to the tele-

graph companies, but on the contrary, will greatly reduce their businesa.

R. E. Desvernine

On Behalf of The Association of Stock Exchange Firms (New York)

and

Code Authority for the Code of Fair Competition for Stock Exchange Firms.

* * *

Deputy Peebles. Do the stock exchange firms, in their leased wires, transmit messages for compensation?

Mr. Desvernine: Not for compensation for the transmission of the message.

Deputy Peebles: Then how do you reach the conclusion that this code will in any way interfere with the stock exchange code?

Mr. Desvernine: There are several arrangements. It has usually been on a split commission basis. You divide the commission on the volume of your commission --

Deputy Peebles: I say, do you transmit messages for compensation?

Mr. Desvernine: The answer is that we do not.

Deputy Peebles: Then how do you figure that this code interferes with the stock exchange code, with the employees that you have?

Mr. Desvernine: As I have indicated in my statement, because the operators who are used on our wires --

Deputy Peebles (interposing): But how is your industry definitely defined in here, where it says "messages for compensation"? You are not in the industry.

Mr. Desvernine: I do not know. I think your definition is broad enough to include it.

There is some compensation flowing -- we are not charging a specific price for the message sent, but we do get a compensa-

tion from a split in commissions on business executed, but that is a compensation.

Deputy Peebles: You are not in the business of transmitting messages for compensation, that is, for profit? You are transmitting messages to carry out your own business.

Mr. Desvernine: Entirely, yes, but we are indirectly receiving a compensation.

Deputy Peebles: But not in the nature of a profit on the message.

Mr. Desvernine: Not in the nature of a profit on the message, no.

Deputy Peebles: I do not see how you have anything to worry about.

Mr. Desvernine: If your interpretation is correct, no.

Deputy Peebles: But it is in plain language.

Mr. Desvernine: I do not think so.

Deputy Peebles: Another question. Is there any other provision you think interferes with the stock exchange firms' code?

Mr. Desvernine : No

Deputy Peebles: You several times spoke of leasing wires from telegraph companies. Are most of the wires to stock exchange firms leased from the telegraph companies, or from the A. T. & T.?

Mr. Desvernine: Practically all from the A. T. & T.

Deputy Peebles. Why do you lease from the A. T. & T.?

Mr. Desvernine: We lease from the A. T. & T. because there is no telegraph company which can physically provide the facilities which the A. T. & T. provides.

If we who are today in the stock exchange business were to offer our contract with the A. T. & T. to any of the telegraph companies, it would be physically impossible for them to sign that contract to provide those facilities.

So that, therefore, there is only one person from whom you can get your service, and that is the A. T. & T., the Bell System.

Deputy Pebbles: Have you any questions, Mr. Scott?

Mr. Scott: No.

Deputy Peebles: Thank you very much.

Mr. George D. B. Bonbright, representing George D. B. Bonbright & Company and Erickson, Perkins & Company.

(No response)

Deputy Peebles: Mr. George A. Garrett, representing Clark, Child & Keech.

(No response)

Deputy Peebles: Mr. Eugene E. Thompson, representing the Washington Stock Exchange.

STATEMENT OF MR. EUGENE E. THOMPSON

WASHINGTON STOCK EXCHANGE et al.

Mr. Thompson: Mr. Deputy, my name is Eugene E. Thompson,

of Washington, D. C.

I appear on behalf of fifteen local stock exchanges, outside of New York.

Members of fifteen stock exchanges, located in various parts of the country, who will be affected, have requested me to appear in protest against the proposed code of fair competition for the telegraph industry; specifically and more particularly I am urged to say to you that the interests of these members will be adversely and seriously affected if section 6, article VII, under the subheading Trade Practice Rules, is permitted to become operative.

Those who have requested me to represent them in this matter comprise a large part, if not all, of the membership of the following exchanges:

St. Louis Stock Exchange

Philadelphia Stock Exchange

Washington Stock Exchange

Cincinnati Stock Exchange

Hartford Stock Exchange

Cleveland Stock Exchange

Los Angeles Stock Exchange

Pittsburgh Stock Exchange

San Francisco Curb Exchange

Detroit Stock Exchange

Richmond Stock Exchange

Louisville Stock Exchange

New Orleans Stock Exchange

Buffalo Stock Exchange

Los Angeles Curb Exchange

The only interpretation which we can make of the language used in this section is that it will, if adopted, deny the right of leased-wire communication, either telephone or telegraph, between brokers and their correspondent unless it should happen that the correspondent is in fact a branch office of the broker-lessee.

It is apparent, in such a situation, that the purely local houses/will be placed at a competitive disadvantage by being forced, if they are to survive, to establish their own leased-wire services, which probably would involve the creation of branch offices of their own in the larger market centers. Aside from other reasons, the cost of leased wires alone would make the innovation prohibitive in many instances.

Brokers as well as investment bankers are important in the economic structure. It is well that there should be a sufficient number of them operating independently at points of corporate activity throughout the country Otherwise stability in the industrial and commercial system would give way to uncertainty. The securities business is a highly competitive and sensitive one. We deal in fractions and split seconds. The market for corporate securities has been de-

scribed as a ready market but as a matter of fact it is an instantaneous market. If we are not prepared to utilize it instantly, our service to our customers and/our community has been impaired in a very vital sense.

We submit respectfully that section 6 should be drastically modified or, preferably, eliminated from the proposed code. From our standpoint we cannot see that such a prohibition belongs in an instrument which assumes to be a code of fair competition.

So far as we know, every company or concern which leases a communications service is on an equal footing with every other lessee of a communication service. Their respective opportunities for obtaining contracts are in this respect on the same basis.

There is no question here as to either fairness or unfairness. True it is that in effecting our arrangements for leased wire services we have taken advantage of the fact that, for our purposes, the facilities of one or the other of the communications companies are best suited for our needs. It is a natural consequence that we should accept this advantage.

That is all.

Mr. Scott: Will you explain what kind of use you make of the leased-wire service?

Mr. Thompson: For the transmission of orders.

Mr. Scott: I did not quite mean that. Do you have a

leased wire from here to any one particular place, or is there a network, or what is it?

Mr. Thompson: Not at all. It is principally the leased-wire service from the larger market centers, from New York or from Chicago to the various cities of the country.

Deputy Peebles: There are some brokers here on the same leased wire?

Mr. Thompson: There are in some places quite a number.

Mr. Scott: For example, in Washington, how many brokers here use the same wire between here and New York?

Mr. Thompson: I think in Washington there is not more than one office on a wire to New York. There may be some in Baltimore or Philadelphia on that wire.

Mr. Scott: On the same line between Washington and New York?

Mr. Thompson: Yes.

Mr. Worthington, of Baltimore, asked me if I would submit for him his brief, which he wished to file for some brokers, members of the New York Stock Exchange and of the Baltimore Stock Exchange; and, with your permission, I will hand that to the Reporter.

Deputy Peebles: Mr. Worthington is not to appear?

Mr. Thompson: He was here yesterday.

Deputy Peebles: You may submit that for the purpose of the record.

Is there anything further?

Mr. Thompson: No.

Deputy Peebles: Thank you very much.

(The brief submitted on behalf of Mr. Worthington is as follows:)

MEMORANDUM REGARDING PROPOSED CODE OF FAIR COMPETITION FOR THE TELEGRAPH COMMUNICATIONS INDUSTRY

At a meeting held in Baltimore on May 11th, there were present representatives of six New York Stock Exchange member firms and two Baltimore Stock Exchange member firms connected by private telegraph wires with New York correspondents.

Mr. John C. Legg, Jr., of Mackubin, Legg & Company, acted as chairman and, after a discussion, Mr. Legg was authorized to appoint a committee of three to appear at the hearing before you on May 16th. Mr. Legg appointed the following committee:

Mr. Charles H. Pinkerton, of Baker, Watts & Company

Mr. Norman H. Blake, of Alexander Brown & Sons

Mr. Ellicott H. Worthington, of W. H. Lanahan & Company

the last-named being designated as chairman, to protest article VII, section 6, of the proposed telegraph industry code.

We desire to bring to your attention that firms and individuals throughout the country that transact their business over private telegraph wires, leased by their correspondents in financial centers, would be placed at a distinct disadvantage in competing for business with branch offices of corporations,

firms, or individuals and their principal offices located in the larger financial centers, as branch offices of lessees of private telegraph wires would continue to enjoy this essential facility.

This, we cannot believe is the intent of those engaged in framing a Code of fair competition for the Telegraph Industry, although it might be well argued that this provision, as as present phrased, would literally mean that only the lessee could use the private wires and would prohibit the lessee's correspondents from using these telegraph facilities, notwithstanding the fact that such use has been made for many years. This provision thus literally construed would mean that the wires leading from the lessee's place of business to his correspondent's would be one-way lines. They could be used for outbound traffic, but not for inbound traffic. A provision with such a one-sided limited use approaches the absurd. Our understanding was that anyone contesting any part of the proposed Code and desiring to offer amendments or desiring to appear before you at 10 A. M. May 16th should communicate with you before noon on May 12th.

We addressed to you a night letter by Western Union telegram, expressing the desire for an opportunity to testify in the hearing on the proposed Telegraph Industry Code May 16th, and offering an amendment for the purpose of modifying Article VII, Section 6, first paragraph, - the night letter reading as

follows:

"Charles H. Pinkerton, Norman H. Blake and Elliott H. Worthington, Committee representing New York and/or Baltimore Stock Exchange firms in Baltimore, desire opportunity to testify in hearing of proposed telegraph industry code ten A. M. May sixteenth for purpose of modifying article seven section six first paragraph so that it will read as follows: No member of the industry shall enter into any lease of a wire, or provide any leased wire service, under existing lease or otherwise, which permits the use of such wire in telegraphic communication by any person or corporation other than the lessee thereof, or its correspondents in the transaction of business with such lessee; nor shall any member of the industry permit any use of a leased wire for compensation or otherwise, under existing lease or otherwise, which will result in giving to any user thereof, other than the lessee, or its correspondents in the transaction of businesswith such lessee, a rate of service more favorable than that which is afforded to other persons using or requiring substantially similar service."

The suggested amendment was for the purpose of providing that the lessee of a private telegraph wire would be permitted to transact his business with his correspondent and the correspondent, in turn, would be permitted to transact his business with the lessee, to conduct the business of both, being the mutual business of the lessee and his correspondent.

We trust that when you have heard the testimony of those permitted to testify their objections to Article VII, Section 6, as interpreted by us, a change will be made which will permit the continued use of private telegraph wire facilities by the correspondents of lessees of such wires, as has been the practice for many years past, in order that the public may enjoy a quick and accurate service in connection with the execution of their orders.

Respectfully submitted,

Charles H. Pinkerton

Norman H. Blake

Ellicott H. Worthington

(signedBy: ELLICOTT H. WORTHINGTON

CHAIRMAN

To Mr. L. H. Peebles, Deputy Administrator,
Room 5515, Department of Commerce Building,
Washington, D. C.

May 16th, 1934

EHW: JTT

Deputy Peebles: Mr. C. B. Cross, of the Boston Stock Exchange, and representing the Association of Leased-Line Telegraphers of New England and the General Securities Committee of New England.

STATEMENT OF MR. C. B. CROSS

BOSTON STOCK EXCHANGE; ASSOCIATION OF LEASED-LINE TELEGRAPHERS OF NEW ENGLAND; and GENERAL SECURITIES COMMITTEE OF NEW ENGLAND

Mr. Cross: Mr. Deputy Administrator, and other officers of the National Recovery Administration, my name is Claude B. Cross, of Boston, Massachusetts, and I am appearing here in behalf of the Boston Association of Stock Exchange Firms, the general committee representing security dealers in New England, and the Associated Leased-Wire Telegraphers of New England.

So far as clarification of certain provisions of the code that have already been mentioned, particularly by Mr. Beaverbine, is concerned, I shall not touch upon them other than to say that we are in favor of clarification so that we shall not have a possible conflict in the two codes.

I wish to direct my statement, or evidence, particularly to section 6 of article VII, the leased-wire provision.

The concerns that I represent object to that most strenuously, for the reasons that I shall try to briefly state.

The effect of this provision, if it is adopted, will be to paralyze trade in securities, to destroy the business of

many brokerage houses, and to throw out of employment most leased-wire telegraphers, not only in New England but throughout the country.

There are some 350 operators of leased lines in New England and, while all would not be thrown out of employment, a large propor tion would, if this section were adopted, and while the number may be comparatively small, I venture the hope that it is not too small to receive the earnest considera-tion of the Deputy Administrator and his Advisers.

The business of brokers dealing in securities listed on exchanges is dependent upon their ability promptly to communicate for execution all orders receives by them. Such orders must be executed at an exchange by a member of the exchange. Where orders are received at an office in the city in which the exchange is located, they are telephoned to the exchange. Where orders are received at an office in another city, say, in Bost n for execution in New York, they are telegraphed from the Boston office to a New York office and then relayed by 'phone to the exchange.

Some firms of stock brokers maintain offices not only in New York but in other cities. In order to insure the prompt execution in New York of orders received in other cities, such firms generally have contracted with the telegraph company for leased wires, that is, what the proposed code defines as arrangements "by which an exclusive, unlimited, or preferential

right to service over one or more channels of communication between certain points during certain times is granted."

Most brokerage firms, however, do not maintain offices in all cities where stock exchanges are located. The vast majority of brokerage houses, for instance, in Boston, have no office in New York. We have 68 brokerage houses in Boston, only 21 of which have New York offices. The other 48 are either correspondents who share or use the wire of one of the other houses for execution of any orders on the New York Stock Exchange.

That means, Mr. Deputy Administrator, that 70 percent of the houses in Boston alone, to say nothing of the other houses, of which there are many, but I cannot give you the exact number throughout New England that will be affected by section 6, and I wish to verify it, but my understanding is different from Mr Desvernine's.

Mrs

Caudle

D 4

my understanding is that while they do not profit by it, that brokerage houses with leased lines do charge in some instances.

There are various arrangemebts. Some correspondents split the profits on a stated percentage basis. Others share the expense, and others charge for the use of their wires.

It is my understanding that one of these three arrangements prevails, but I should like to verify that.

But in as much as we consider it of the utmost importance, I wish at this time to raise a serious doubt and state my understanding as to the arraugements under which they operate.

Now, for the prompt transmission of these orders, it has become the practice of a number of such houses to make an arrangement with a firm having leased wire service permitting the use of such leased wire service to communicate those orders. The firm which maintains the leased wire service thereby obtains business. The firm which is permitted to use the leased wire for such business thereby is enabled to have its orders executed with dispatch. Such permission to use the facilities of a leased wire is made effective by connecting the office of the licensee with its own telegrapher, directly to the leased wire. Such arrangements are the established practice under which the business of dealing in securities has grown up.

One house having a leased wire may have such arrangements with several hundred other firms having a right to use the

by the lessees. There are so-called "wire houses" whose business depends in very large part upon orders received from such licensees.

Without the cooperation just described, it is obvious that orders to be executed in New York, or some other city in which an exchange is located, received outside of that city, could be executed promptly only by firms which maintain their offices in the exchange city with a leased wire to the point where the order was received. All other orders, if to be sent by telegraph, would have to be sent as ordinary messages, dependent upon messenger service.

The business of dealing in securities, as at present organized, could not be carried on in that way.

Section 6 attempts to prohibit such cooperation, or that would be the effect.

I do not believe that that was the intent, but that is the effect, as we construe it.

If the leased wire service can be used only by the lessee thereof, it means that it is limited to intra-office communications of the same firm.

As already stated, the security business demands direct wire service, such as is furnished by leased wires. Ordinary service can not successfully be used. Therefore, it is not a question of substituting another service to the brokerage houses,

the great majority of them, 70 per cent, at least, but it means depriving them of the only satisfactory means of communication which practice has demonstrated is the best method.

If this paragraph were adopted and approved, it would mean that approximately 70 per cent of our brokerage in New England, and practically all of the dealers in securities located throughout New England, would either have to lease their own wires, obtain office space in New York, have an office and there employ help and run such an office, or be driven out of business.

Most of these houses would be unable to open and maintain a New York office, so they would be thrown out of business.

You have here, Mr. Deputy Administrator, as I see it, the unusual and extraordinary situation, where the National Recovery Administration, in attempting to regulate one industry, the telegraph communications industry, is in effect going to drive out of business a large part of another industry, already regulated, if Section 6 is retained, and it has the meaning we construe it.

We come here in this appeal to you in this public hearing, not as supporters of any one communications company. We are asking for service by whomever furnished, and one that is properly furnished through the leased lines that we have today, and we ask that that provision be eliminated, or that there be added to the second paragraph of Section 6 words that would exempt

dealers in securities, as the United States Government and the press have been exempted, because of their peculiar method of handling the business, which practice has demonstrated to be the most effective, so that that paragraph as then amended would read:

"This section shall not apply to interstate wire facilities between members of the industry, or to wire service or services furnished to the United States or to any of its agencies, or to the press, or to brokers or dealers in securities."

With your permission, I have some further remarks that should like to hand to the reporter to be incorporated into the record, and I do this so as to save time and to avoid possible repetition.

Deputy Peebles: It will be all right for you to do that. Are you through with your statement?

Mr. Cross: Yes.

(6) (The statement submitted for the record is as follows:)
fls.

To NATIONAL RECOVERY ADMINISTRATION

In re PROPOSED CODE OF FAIR COMPETITION

FOR THE

TELEGRAPH COMMUNICATIONS INDUSTRY

BRIEF IN OPPOSITION TO PROPOSED CODE IN BEHALF OF

BOSTON ASSOCIATION OF STOCK EXCHANGE FIRMS AND

GENERAL COMMITTEE REPRESENTING SECURITY DEALERS IN

NEW ENGLAND AND ASSOCIATED LEASED WIRE TELEGRAPHERS

OF NEW ENGLAND

We object particularly to the provisions of section 8 of Article VII of the proposed Code, which reads, in part:

"No member of the industry shall enter into any lease of a wire, or provide any leased wire service, under existing lease or otherwise, which permits the use of such wire in telegraphic communication by any person or corporation other than the lessee thereof; nor shall any member of the industry permit any use of a leased wire, for a compensation or otherwise, which will result in giving to any user thereof, other than the lessee, a rate or service more favorable than that which is afforded to other persons using or requiring substantially similar service."

The effect of this provision, if it is adopted, will be to paralyze trade in securities, to destroy the business of many brokerage houses, and to throw out of employment most

leased wire telegraphers not only in New England but throughout the country.

The business of brokers dealing in securities listed on exchanges is dependent upon their ability promptly to communicate for execution all orders received by them. Such orders must be executed at an exchange by a member of the exchange. Where orders are received at an office in the city in which the exchange is located, they are telephoned to the exchange. Where orders are received at an office in another city, say in Boston for execution in New York, they are telegraphed from the Boston office to a New York office and then relayed by 'phone to the exchange.

Some firms of stockbrokers maintain offices not only in New York, but in other cities. In order to ensure the prompt execution in New York of orders received in other cities, such firms generally have contracted with a telegraph company for leased wires, that is, what the proposed Code defines as arrangements "by which an exclusive, unlimited or preferential right to service over one or more channels of communication between certain points during certain times is granted."

Most brokerage firms, however, do not maintain offices in all cities where stock exchanges are located. The vast majority of brokerage houses, for instance, have no office in New York. They depend for the execution of their orders upon other brokers having an office in that city. For the prompt

transmission of these orders, it has become the practice of such houses to make an arrangement with a firm having leased wire service permitting the use of such leased wire service to communicate those orders. The firm which maintains the leased wire service thereby obtains business. The firm which is permitted to use the leased wire for such business thereby is enabled to have its orders executed with dispatch.

Such permission to use the facilities of a leased wire is made effective by connecting the office of the licensee, with its own telegrapher, directly to the leased wire. Such arrangements are the established practice under which the business of dealing in securities has grown up. One house having a leased wire may have such arrangements with several hundred other firms having a right to use the leased wire only for the transmission of orders for execution by lessee. There are so-called "wire houses", whose business depends in very large part upon orders received from such licensees.

Without the cooperation just described it is obvious that orders to be executed in New York, or some other city in which an exchange is located, received outside that city, could be executed promptly only by firms which maintained offices in the exchange city with a leased wire to the point where the order was received. All other orders, if to be sent by telegraph, would have to be sent as ordinary messages,

dependant upon messenger service. The business of dealing in securities, as at present organized, could not be carried on in that way.

Section 6, quoted above, attempts to prohibit such co operation. If leased wire service can be used only by the lessee thereof, it means that it is limited to intraoffice communications of the same firm.

We assume that the direct object of the clause in question was not to disrupt the business of security brokers and dealers. It is manifest, however, that that will be its effect That effect might be avoided by adding to the sentence in the sentence providing for exceptions so that it should read:

"This section shall not apply to interchange of wire facilities between members of the industry, or to wires, circuits or services furnished to the United States, or to any of its agencies, or to the Press, or to brokers or dealers in securities."

Certainly, even if the main object of the clause in question were proper, its incidental effects are not to be disregarded. If these incidental effects are "to eliminate or oppress small enterprises" and "to discriminate against them," they are directly prohibited by the National Recovery Act Such, we submit, are the incidental effects of Section 6 of Article VI of the proposed Code.

We believe, however, and urge that the principal object of the clause and of Article VI in its entirety, is not one authorized by the National Recovery Act.

The original purpose of section 6 seems to be to prevent evasion of the provisions of prior sections of Article VII. Prior sections require the publication of tariffs and prohibit the rendering of telegraphic services except at those tariffs. Under section 3 no incidental services are to be rendered without making a charge therefor.

It is obvious that the published tariffs of the companies in the industry will be identical.

The main purpose of Article VII, therefore, seems to be to ensure that all persons in the industry charge the same rates for the same services. That, at least, will be its natural effect.

We submit that the Code in that respect violates the proviso in sec. 3 (a) of the National Recovery Act:

"That such code or codes shall not permit monopolies or monopolistic practices."

To further effectuate that purpose section 6 restricts the rights of lessees of leased wires, so that they may not at their own expense or for a char ge extend the use of the privileges they have purchased to their customers or to other persons with whom they are transacting business.

Such an extraordinary interruption of established business relations is surely wholly without the scope of the authority granted by Congress to the President in section 3 (d) of the National Recovery Act, under which the proposed Code is presented, that is, the authority to "prescribe and approve a code of fair competition * * * which shall have the same effect as a code of fair competition approved by the President under subsection (a)". The poer to formulate "standards of fair competition" for any trade or industry is not uncontrolled.

It does not include a power to denounce as an "unfair method of competition" a practice in one industry which heretofore, and still in other industries, is regarded as a normal and honorable mode of competition. The power to formulate such standards is not an authority to prohibit competition except upon condition that all competitors offer equal terms to customers. Certainly, it does not go so far as to require the destruction of established relations between one competitor and its customers, and of the business built upon that basis, in order to ensure that competition shall be upon such equal terms.

Yet it is just that effect, we submit, which follows from Article VII of the proposed Code, and particularly from Section 6 of that Article. It prohibits relationships between a telegraph company and brokerage houses, which have been long established and upon the basis of which our system of distri-

bution of securities has been based, and involves the destruction of the capital of those enterprises which have grown up under that system and the loss of employment of those now gainfully occupied therein; its only purpose appears to be to prevent one telegraph company from charging lower rates than another.

We earnestly protest that the proposed Code should not be approved.

Respectfully submitted,

Claude B. Cross.

Was fls

Deputy Peebles: I should like to ask you a few questions. You mentioned, as I understood it, that there are 69 firms in Boston that are operating on a wire to New York, if I got the figure correctly?

Mr. Cross: If I conveyed that impression, or said that, I did not intend to. What I intended to say was that we have 69 brokerage houses in Boston, whom I represent here, and 21 of them have New York offices, and the others when they deal in securities listed on the New York Stock Exchange, must do it through someone else's wire.

Deputy Peebles: Are they all parties to the lease?

Mr. Cross: I do not understand so.

Deputy Peebles: What form of compensation do they pay to the 21 that have leased wires?

Mr. Cross: There are certain houses which have correspondents in Boston. I can not state the arrangement between all of them, but I do know that at least in one instance that the correspondent gives the New York house which furnishes the various facilities, including a leased wire, a percentage of its profit, and I think that that is general with the correspondents' houses in Boston.

As to those using the facilities of the so-called leased-wire houses, they generally have their own telegrapher, and they are conected with the leased wire. They use that wire to communicate their orders to the office of the lessees in

New York for execution by the lessee, which is a New York house, or has a New York branch or office, and the lessee obtains a part of its compensation by transacting that business for the concern giving the order and using the leased wire, and I think that there is a charge made for the wire service, but as to that I have doubt, in view of what Mr. Devernine stated, and I should want to have the opportunity of verifying that, and submitting the information afterwards to the Deputy Administrator.

Deputy Peebles: But you do not think that all of these houses are parties to the lease, although they have a direct wire?

Mr. Cross: Not some of them, no, sir.

Deputy Peebles: But they do have a wire in their office?

Mr. Cross: They have a wire in their office, and generally furnish their own telegrapher.

Deputy Peebles: And they connect that wire to the leased wire under certain conditions?

Mr. Cross: To the leased wire of the lessee, and the operators that are employed in those houses so connected would lose their jobs if this section in this code is approved or adopted.

Deputy Peebles: Is there any case, to your knowledge, where a cash payment of so much per message may be charged over these leased wires?

Mr. Cross: I know of no such practice as that, because, as I understand, there is a monthly rental paid by the lessees, and the users either pay by sharing that monthly rental, or else, in the case of some of the correspondents, pay a percentage of the profits to the lessee.

Deputy Peebles: But they are not actually on the lease?

Mr. Cross: The correspondents, at least some of them, I know, are not.

Deputy Peebles: Who pays the cost of the installation of the wires to connect the leased wire? Who does that work?

Mr. Cross: I am sorry that I can not answer that, as to whether it is paid by the user or by the lessee. I shall be glad to get that information and furnish it to you later with the other information, as to whether there is ever a contribution in money by a user to the lessee, and also, so far as I can find, the number of those users who are on the lease.

Deputy Peebles: Thank you very much. I would appreciate it if you would give me very complete information on that.

Mr. Cross: I will see that the Administrator gets it.

Deputy Peebles: Thank you.

Mr. Charles H. Pinkerton, representing New York and/or Baltimore Stock Exchange Firms in Baltimore.

(Mr. Pinkerton did not respond to the call of his name.)

Deputy Peebles: Mr. Norman H. Blake, likewise representing

the New York and/or Baltimore Stock Exchange Firms in Baltimore.

(Mr. Blake did not respond.)

Deputy Peebles: A representative of the Boston Association of Stock Exchange Firms.

Mr. Crosa: I think that that is our secretary, who had to go back to Boston last night.

Deputy Peebles: Thank you. A representtive of Mervin Ash & Co.

(There was no response.)

Deputy Peebles: Mr. L. R. Ballinger, representing Ballinger & Company.

(There was no response.)

Deputy Peebles: Mr. P. C. Hill, of Whitman and Barnes, Inc.

(There was no response.)

Deputy Peebles: Mr. Walter W. Price, representing Livingston & Company.

(There was no response.)

Deputy Peebles: Mr. G. W. Spaid, representing Josephel & Company.

(There was no response.)

Deputy Peebles: Mr. Lawrence W. Fox, Jr., representing the Pacific Coast Association of New York Stock Exchange Firms.

STATEMENT OF MR. LAURENCE W. FOX, Jr.

REPRESENTING THE PACIFIC COAST ASSOCIATION OF

NEW YORK STOCK EXCHANGE FIRMS.

Mr. Fox: Mr. Administrator, my name is Laurence W. Fox, Jr. I reside in Los Angeles, California. I am a partner in the firm of Slaughter, Anderson & Fox, members of the New York Stock Exchange.

I am here representing some nineteen members of the New York Stock Exchange who maintain offices on the Pacific Coast, and I am here to protest Section 4 and Section 6 of the Code.

While, in the opinion of some people, the members of the New York Stock Exchange may be the vanishing race, I do not think that they are, and I want to show by technical representations and presentations some of the points that I think you are interested in.

Mr. Desvernine has discussed the technical points of the two codes, in which I concur, and I want to show, if possible, that the proposed sections will put out of business probably 15 out of 19 members of the Stock Exchange on the Coast, because the business of the members out there is absolutely dependent on the leased wire arrangement.

You are familiar with the necessity speed, so I won't go into that, but if these members did go out of business on the Pacific Coast, it would cause, in my opinion, just those things that the N. R. A. does not want.

In the first place, the member firms out there employ among themselves about 2,000 employees, and about 80 per cent of those will go out of the brokerage business.

In the second place, the facilities of the brokerage firms are of aid to the commerce and trade of the Pacific Coast, not only in securities but in commodities of all kinds, and they are of aid in connection with exporters and importers of all kinds. Business that now comes to us could just as well go to Canada or to European countries, and we could not get the service that we have now because of the lack of facilities we would then have.

I have a brief letter here which I would like to read in evidence.

Vaalen
Fle
Van

"On behalf of the Pacific Coast Association of New York Stock Exchange Firms, I wish to protest against Sections #4 and #6, Page #11 of the proposed Code for the Telegraph Communications Industry. The Pacific Coast Association is made up of the following firms:

A. O. Slaughter, Anderson & Fox	Schwabacher & Co.
J. Barth & Co.	Straesburger & Co.
Wm. Cavalier & Co.	Sutro & Co.
Graves, Benning & Co.	Dean Witter & Co.
E. F. Hutton & Co.	Simmons & Peckham
McDonnell & Co.	Young Clark & Co.
E. A. Pierce & Co.	Dieringer & Co.

Carl Raiss & Co. Howell, Brayton & Douglass

Russell, Miller & Co. J. A. Hogle & Co.

Mervin Ash & Company

"Section #4 states that "No members of the Industry shall make, give or permit a rate to the users of any class of service, discriminating -- against users of any other class of service---". If this is to be interpreted that the members of the industry cannot supply service on the basis of time leasing rates because such method of leasing might be discriminatory against those users of the service who pay by the word or by the message, we protest this Section on the grounds that if some of the members of the Association which I represent are not able to lease trans-continental wires on a time basis comparable to the basis which is now operative, these firms would be forced to discontinue their Pacific Coast offices because of the prohibitive cost to them of conducting their business by telegraph on the existing word or message basis.

"Section #8, Page #11, states: 'No member -- shall enter into any lease of a wire -- which permits the use of such wire -- by any person or corporation other than the lessee thereof; nor shall any member -- permit any use of leased wire-- which will result in giving any user thereof other than the lessee a rate or service more favorable than that which is afforded to other persons using or requiring substantially similar service.' We protest this Section because should it be adopted

the enormous increase in the cost of maintaining offices on the Pacific Coast would cause the closing of the offices of the majority of the members of the New York Stock Exchange in that territory. A great number of employees would be forced out of work and the revenues of the members of the Telegraph Communications Industry would be adversely affected in a very great degree."

Tels
fls
Whalen

Incidentally, I think that the members of the Stock Exchange are one of the best clients of the members of the telegraph industry. My own firm leases two wires, one out of San Francisco and one out of Los Angeles, and our annual rental is $131,000.

In my estimate, the 19 members of the stock exchange on the Pacific Coast pay about $1,000,000 in toll charges, which is a very substantial item, and what I say regarding the Pacific Coast applies, of course, many times to the out-of-town offices throughout the country.

The Pacific Coast, I think, is a pretty good section to think of, because the farther away from New York you are, the higher your rentals, and about every broker outside of New York City has to do business by telegraphic communication, and in the majority of cases, by leased wire.

"At the present time, among our group there are four different methods of using trans-continental telegraph systems. I will itemize these and show the hardships that will be effected by Section #6 of the Proposed Code, if adopted:

"1. MEMBERS OF THE NEW YORK STOCK EXCHANGE MAINTAINING OFFICES BOTH ON THE COAST AND IN NEW YORK, WHICH OFFICES ARE CONNECTED BY PRIVATE WIRES LEASED FROM A TELEGRAPH OR TELEPHONE COMPANY.

"Out of nineteen members, five fall in this classification. Of these five, probably three would have to discontinue coast

offices because they would not be able to share their wire cost in the manner described in the next classification.

"2. MEMBERS OF THE NEW YORK STOCK EXCHANGE WHO JOINTLY USE AND JOINTLY SHARE COST OF LEASED WIRE.

"The total volume of business transacted by any two firms might not warrant the use of more than one trans-continental wire. Obviously, all such firms could not afford to lease their own private trans-continental wires. But the Code would force them to do so if they desired to stay in business. Comparable to those firms are those in the next classification.

"3. MEMBERS OF THE NEW YORK STOCK EXCHANGE MAINTAINING OFFICES ON THE PACIFIC COAST BUT DEALING WITH A CORRESPONDENT FIRM IN NEW YORK RATHER THAN MAINTAINING THEIR OWN NEW YORK OFFICE.

"Section #6 would necessitate such firms opening their own New York offices because the wire contact with the correspondent office would make the correspondent a user of the wire, although he was not a lessee, which would be prohibited. Section #6 would also prohibit the reverse of this, namely the leasing of a trans-continental wire by a firm maintaining ow York offices but no Coast offices and transacting business with a correspondent on the Pacific Coast.

"4. A SUBSTANTIAL NUMBER OF MEMBERS OF THE NEW YORK STOCK EXCHANGE ON THE PACIFIC COAST NEITHER LEASE TRANS-CONTINENTAL WIRES DIRECTLY OR JOINTLY NOR DO THEY HAVE ANY FIRST OUTSIDE OF THEIR OWN TERRITORY.

Incidentally, that group makes up the majority of the members out there, and they are the smaller people, and because they are small, they can not afford these leased wires, and therefore the N. R. A. would be putting out of business the smaller factors, allowing the larger members, of which my firm is one, to continue in business.

"These firms transact their business by an arrangement with another New York Stock Exchange member who maintains its own leased trans-continental wire system and Coast offices. Compensation between two such firms is usually in the form of a division of commission and interest rates. Section #6 of the proposed Code would eliminate such an arrangement because it might be construed as giving a rate of service more favorable than that afforded to other persons using substantially a similar service. Should this be the case, the firms in this classification would be forced out of business because their small volume of business would not enable them to afford the cost of their own leased wire or the opening of their own New York offices.

"Since Section #6 prohibits the leasing of a wire, except for the exclusive use of the lessee, the present method of wire communication such as 'drops' or 'loops' between trans-continental wire firms and correspondent offices in the same city or elsewhere would be excluded. Also, the present method of communication between two adjoining firms via short leased

wires would be prohibited because since both firms enjoy the use of the wire neither could qualify as an exclusive lessee.

"Because of the above, we feel most strongly that the adoption of Sections #4 and #6 of the proposed Telegraph Code would result in substantially decreased revenues of the members of the Telegraph Communications Industry, would result in increased unemployment because of the closing of a great number of brokerage offices throughout the country, particularly on the Pacific Coast, and would most adversely affect the general flow of commerce and stimulation of business, which is the objective of the National Recovery Administration."

I have here a suggestion in connection with Section 6, which I will not file at the present time, because I want to confer with some of my associates from other parts of the county.

As a suggestion, from the standpoint of the brokers, if Sections 4 and 6 were eliminated entirely, I think the best purposes would be fulfilled, but there are several ways in which all interests could be adapted, and one was suggested just now, which is that you include the brokers with the press and the other excepted classes.

That represents my thoughts on the matter, and I have been in the wire business for many years, and I think that I have seen every angle of it.

Deputy Peebles: How many leased wires did you say that there were between Los Angeles and San Francisco?

Mr. Fox: I did not say, but at present there are six. That varies, depending on the market.

Deputy Peebles: Those are wires through to New York, usually?

Mr. Fox: Yes.

Deputy Peebles: How many brokerage firms are there in the two cities that depend upon those six wires?

Mr. Fox: Nineteen members of the New York Stock Exchange in the two cities.

Deputy Peebles: And all of these so-called wire houses depend upon these six wires to transact their business?

Mr. Fox: Yes.

Deputy Peebles: Do they have connections direct to the leased wire?

Mr. Fox: The broker himself?

Deputy Peebles: Yes.

Mr. Fox: Yes.

Deputy Peebles: In other words, they have a telegraph key which they can connect to the leased wire?

Mr. Fox: You can either have a loop which puts your correspondent on the same wire that you are using, or else you may be on a relay where the operator will connect you from this instrument to the trans-continental wire.

Deputy Peebles: And where you have the relay instrument, usually do you share the expense of the wire?

Mr. Fox: The service of the trans-continental wire is given for nothing, because the correspondent is the customer of the lessee of the trans-continental wire.

Deputy Peebles: The correspondent is the customer of the lessee?

Mr. Fox: Yes. In other words, he will sell 100 shares in Los Angeles and he will deliver that order to me in my office, and I will put that on the wire.

Deputy Peebles: And as to those connected directly to that trans-continental wire, are they named as parties to the lease?

Mr. Fox: They can be, but in some cases they are not.

Deputy Peebles: But they are directly connected to the trans-continental wire, and can use it at will?

Mr. Fox: By cutting in, yes.

Deputy Peebles: In the early part of your statement, you spoke of the advantage to exporters and importers of these trans-continental wires.

What type of your business do you handle for exporters and importers?

Mr. Fox: Quotations in silk, grain, cereals, and various things.

Deputy Peebles: How are you compensated for these quotations?

Mr. Fox: From time to time the importers or exporters

will give us their business in either commodities or stocks and bonds.

Deputy Peebles: Do youcharge them anything for getting quotations?

Mr. Fox: No.

Deputy Peebles: Do they send any messages through, and pay compensation to you?

Mr. Fox: No.

Deputy Peebles: But you may get them quotations on silks and other commodities, and depend in return on any order s that they may give you for stocks and bonds?

Mr. Fox: That is correct.

Deputy Peebles: Are there any other types of business that you transact over the wire which do not directly pertain to the bond business, but which you do in the hope of getting compensation later through the bond business?

Mr. Fox: no, with a minor exception, and a very minor one.

Every once in a while a customer will desire to transmit a message of some personal nature, but my experience with these messages is such that if we did not handle them, they would not be given to either the Western Union or the Postal.

Deputy Peebles: Yet you do handle them?

Mr. Fox: Yes, but in very small number.

Deputy Peebles: Does your lease prevent the handling

of these quotations for the silk exporters as a part of your business?

Mr. Fox: No. A commodity man might telephone and say, "What is there the last of December on sugar?" and we would reply, because we do also handle business in future sugars.

Deputy Peebles: But suppose that anybody unknown to you came in and asked you to send a message, would you send the message in the hope that he might place his bond orders with you later?

Mr. Fox: No, under absolutely no circumstances. One of the big problems is to keep within the limits of the leased wires, and we have enough to keep them busy, anyhow.

Deputy Peebles: Thank you very much.

Mr. Henning Chambers, representing J. B. Hilliard & Son, Almstedt Brothers, W. L. Lyons Company, and Henning Chambers & Co.

(There was no response.)

A representative of Whaples, Viring & Company.

(There was no response.)

Deputy Peebles: Robert J. Speaker, of the Chicago Association of Stock Exchange Firms, and Association of Grain Commission Merchants.

(There was no response.)

Deputy Peebles: Edward H. Thompson, of the same associations.

(There was no response.)

Deputy Peebles: Mr. Morris Townley, of the same Associations?

(There was no response.)

Deputy Peebles: John M. Madra representing John F. Clark & Company.

STATEMENT OF MR. JOHN M. MADRA

REPRESENTING JOHN F. CLARK & COMPANY.

Mr. Madra: My name is John M. Madra, and I am here on behalf of my firm, and Mr. Deputy Administrator, with your permission, I would like to read a letter addressed to you by my firm.

Deputy Peebles: Very well.

Mr. Madra: We are particularly interested in Section 6, Article VII.

The letter reads:

"For many years, we have operated a private wire system by means of telegraph wire service leased from the American Telephone & Telegraph Company to connect our branch offices and the offices of independent brokers, banks and cotton mills with our offices in New Orleans, Chicago and New York for the transaction of business on exchanges located in those cities. The leased wire service has been of mutual advantage to ourselves and the independent brokers, banks and cotton mills whose offices have been served thereby. Without that service, we believe it is fair to assume that the reduction in volume of business would necessitate eliminating similar service to some of our branch offices, possibly resulting in closing some of them. Another result would be a less efficient form of service to the banks, cotton mills and independent brokers and the possible extinction of some of the latter.

"We ourselves absorb the cost of the leased wire system and are able to do so because of the flow of business and resultant commissions to us from all parties connected on the wires. The volume of business of any of these independent parties is inadequate to justify their leasing similar wires. They and we know from experience that any other form of service suffers by comparison with the leased wire service. Summed up, we believe the proposed section referred to above would reduce efficient in handling the business, thereby resulting in a smaller volume of business, which would cause a reduction

in employment; all without any apparent benefit to anyone.

Very truly yours,

Jno. F. Clark & Co."

I failed to state, Mr. Chairman, that I am not a member of that firm, but I am supervisor of branch offices for my firm.

Deputy Peebles: Your firm, I take it, is engaged in the cotton business and other produce exchange?

Mr. Madras: Yes, sir.

I also have here, if you will permit me, a list of our connections. I would like to put that into the record.

Deputy Peebles: You have how many connections?

Mr. Madras: Twenty-five.

Deputy Peebles: Very well.

(The list of wire connections of John F. Clark & Company is as follows:)

LIST OF WIRE CONNECTIONS

JNO. F. CLARK & CO.

Office	Address	Business
G. G. Dowling	Anderson, S. C.	Brokers
J. C. Collins	1st National Bank Bldg. Blytheville, Arkansas	Brokers
I. R. Jones	Scottsboro, Alabama	Brokers
C. S. Hinton & Co.	Columbus, Miss.	Brokers
Harbour & Smalley	Meridian, Miss.	Brokers
Erwin Cotton Mills., Inc.	Durham, N. C.	
R. G. Dunning Brokerage Co.	435 Chestnut St. Gadsden, Ala.	
G. G. Dowling	Greenwood, S. C.	Broker
Hamilton National Bank	Chattanooga, Tenn.	
W. C. Coker	Box 165, Greenville, Ala.	Broker
Jno. F. Maybank & Co.	South Atlantic Wharf Charleston, S. C.	Cotton
Levie & Peddy	Macon, Ga.	Brokers
Manget Brothers Co.	17½ Greenville St. Newman, Georgia	Cotton
Geo . S. Whittlesey	Albany, Ga.	Brokers
Williamson, Inman & Co. Inc.	38 Ivy St., Atlanta, Ga.	Cotton
C. S. Hinton & Co.	Box 265, Tuscaloosa, Ala.	Brokers
Jones & Bredlove	Opelika, Ala.	Brokers
Proximity Mfg. Co.	Greensboro, N. C.	Cotton
H. M. Carr	Box 673, Laurel, Miss.	Brokers

T. H. Palmer & Co.	107 No. Foster St. Dotham, Ala.	Brokers
Ira H. Virgin & Co	Troy, Ala.	Brokers
H. . Ruppert & Co	402 Pine St., St. Louis, Mo	Brokers
S. J. Harman & Co.	201 Milan St, Shreveport, La.	Brokers
Cromack & Cashmere	Luling, Texas	Brokers
J. E. Munn	Columbus, Ga.	Broker

Deputy Peebles: Are those people whose names you have put into the record connected with this wire that you have been talking about?

Mr. Madra: Oh, no. We have several circuits.

Deputy Peebles: How many have you on your several circuits?

Mr. Madra: Well, they will run about eight offices a circuit, that is, our own branches, and our correspondents.

Deputy Peebles: What is the business that goes over the wire, mainly?

Mr. Madra: Well, if you will allow me, it is cotton orders, stock orders, grain orders, bonds.

In that list of our correspondents, and we mention them as correspondents, we have one bank, two textile manufacturers, three cotton merchants, and nineteen correspondents are brokers.

Deputy Peebles: When you say "broker" you mean a bond and stock broker?

Mr. Madra: No, sir; cotton broker.

Deputy Peebles: And you have eight or nine to a circuit?

Mr. Madra: Yes, sir.

Deputy Peebles: Are they all parties to the lease?

Mr. Madra: No, sir.

Deputy Peebles: Have you any other parties to the lease except yourself, in the case of any of these firms?

Mr. Madra: No, sir.

Deputy Peebles: Do these firms have instruments in their offices, the Morse instrument, that they can connect to the leased wire?

Mr. Madra: No, sir.

Deputy Peebles: Do you have the teletypewriter, or the printer, or anything of that kind?

Mr. Madra: Not in our branch offices. If any of our correspondents have them, I do not know.

Deputy Peebles: They do not connect with your leased wire, do they?

Mr. Madra: No, sir.

Deputy Peebles: How do they get their messages to you?

Mr. Madra: Over our Morse circuit.

Deputy Peebles: How do t ey compensate you for handling it?

Mr. Madra: Through the volume of business that they give us.

Deputy Peebles: Do you charge them a commission for giving you an order, or is it proportionate to the number of words

that they send?

Mr. Madra: We have some correspondents who are members of some of the Exchanges, members of the New York Cotton Exchange, and the New Orleans Cotton Exchange, and in a case of that kind, the commission is split.

Now, on these cotton mills here, one of the owners of that mill is a member of the New York Cotton Exchange, and he gets a part of the commission.

Now, we have some who are not members, and we get all the commission.

Deputy Peebles: Is there any separate charge made, other than the commission, for the use of the service?

Mr. Madra: No, sir.

Deputy Peebles: In other words, you do not handle wires for compensation, in which payment for the use of the wire is all the compensation you may get?

Mr. Madra: No, sir.

Deputy Peebles: You have filed that list of the connections that you have, have you?

Mr. Madra: Yes, sir.

Deputy Peebles: Thank you very much, Mr. Madra.

Mr. John C. White, of the American Cotton Shippers Association.

(Mr. White did not respond.)

Deputy Peebles: Mr. T. B. Wilkinson, of the Erwin Cotton

Mills Company.

STATEMENT OF MR. F. B. WILKINSON

REPRESENTING THE ERWIN COTTON MILLS COMPANY .

Mr. Erwin: Mr. Deputy Administrator, my name is F. B. Wilkinson. My position is that of Assistant Cotton Buyer for the Erwin Cotton Mills, Durham, North Carolina.

With your permission, I have a letter from my firm, which I would like to read.

Fls
Wms

THE ERWIN COTTON MILLS COMPANY

Durham, N. C., May 16, 1934.

Mr. L. H. Peebles, Deputy Administrator,
Room 3316, Department of Commerce Bldg.,
Tel Washington, D. C.
8 Dear Sir:

Re: Proposed code for telegraph communication industry, with particular reference to Section 6, Article 7.

The Erwin Cotton Mills Company, of Durham, N. C., wish to state that the private wire service of Jno. P. Clark & Company was inaugurated over two years ago because of a requisite need for quick and continuous quotation service of the principal cotton exchanges.

We are buying and consuming in excess of 100,000 bales of cotton per year from more than fifty merchants, and of course, locally from farmers at our respective mills. It is entirely necessary therefore that we maintain a quick quotation service inasmuch as all purchases are based on quotations of recognized cotton exchanges.

Our raw cotton and finished goods inventories are constantly changing our position marketwise through the sales of finished goods and purchases of raw cotton. It is entirely essential that we have adequate facilities to hedge our position quickly as sound business principles would demand.

This wire service not only furnishes us with quotations on cotton, but gives us a perspective on the stock, grain and various other markets, as well as foreign exchanges. We are provided through this source with the latest political news, business and industrial devel opments which we consider important.

We are prompted to inaugurate this private wire service because of the gross inadequacy of the quotation service furnished by commercial telegraph companies. We consider this private wire service as an integral part of our operating organization and should Section 6, Article 7 of the propored telegraph code be approved, we would be forced to resort to a service inadequate to meet the needs of our business.

Should we be forced to give up our present private wire facilities, we would be seriously inconvenienced and suffer subsequent damage. We feel sure that this service does not offer competition with the telegraph or telephone companies or afford an unequal opportunity to any persons, firms, or corporations engaged in a similar business that any desire to avail themselves of such facilities.

We hope the Administration will see our position in this situation and we respectfully urge that Section 6, Article 7 of the proposed telegraph code be amended, modified, or eliminated to relieve us of inevitable damage and inconvenience to our business.

Wms

Very truly yours,

The Erwin Cotton Mills Company

By Fred B. Wilkinson

Mr. Deputy Administrator, with your permission we would like to have this letter incorporated into the record.

Deputy Peebles: It may be. Is there any further statement that you wish to make?

Mr. Wilkinson: That is all.

Deputy Peebles: I take it from your statement that you are a correspondent of John Clark & Company?

Mr. Wilkinson: Yes, sir.

Deputy Peebles: Are you a co-lessee in any way?

Mr. Wilkinson: No, sir.

Deputy Peebles: Just what type of connection do you have with their wire?

Mr. Wilkinson: We use our connection strictly for quotation service. We give them that service, and they give us their business, which is a mutual proposition.

Deputy Peebles: What type of connection is it?

Mr. Wilkinson: A Morse wire.

Deputy Peebles: Which connects directly --

Mr. Wilkinson: To one of their trunk lines.

Deputy Peebles: Do you cut in on their trunk line when you want to send a message?

Mr. Wilkinson: That is right.

Deputy Peebles: How do you compensate them?

Mr. Wilkinson: By giving them lots of our business.

Deputy Peebles: How do you compensate them for your business t at you do not give them, and yet you use their wire for?

Mr. Wilkinson: I do not understand.

Deputy Peebles: You say that you give them at least a part of your business. The business that you give them is business that goes over their wire, is it?

Mr. Wilkinson: It is.

Deputy Peebles: Is there anything that goes over their wire that you do not give them?

Mr. Wilkinson: No, sir.

Deputy Peebles: Is your firm a party to the lease of John F. Clark & Company?

Mr. Wilkinson: It is not.

Deputy Peebles: You are not on the lease?

Mr. Wilkinson: No, sir.

Deputy Peebles: Who installed your loop or instrument?

Mr. Wilkinson: John F. Clark & Company had it installed. I imagine that the American Telephone and Telegraph Company looked after the installation.

Deputy Peebles: But your firm is not a party to the lease?

Mr. Wilkinson: It is not a party to the lease.

Deputy Peebles: And you pay nothing to John F. Clark & Company, except what they may earn on the business that you give them?

Mr. Wilkinson: That is right.

Deputy Peebles: I thank you very much.

Mr. G. G. Dowling, of the New Orleans Cotton Exchange.

STATEMENT OF MR. G. G. DOWLING

REPRESENTING THE NEW ORLEANS COTTON EXCHANGE.

Mr. Dowling: Mr. Administrator, I am appearing in my own behalf, and not as a member of the New Orleans Cotton Exchange. I am a member of the New Orleans Cotton Exchange, with offices at Greenwood and Anderson, South Carolina.

I am a broker or correspondent, and their business is conducted with various firms who are members of the Commodity and Stock Exchanges.

Continuous Commodity and Stock quotations are furnished my offices by telegraph only and are provided by the leased telegraph wire of Messrs. Jno. F. Clark & Company, and such quotations are furnished my offices at the same time that said quotations are furnished other brokers, correspondents and the branch offices of the said Jno. F. Clark & Company -- located on the same telegraph circuit.

Tel
9

Neither the Western Union Telegraph Company nor the Postal Telegraph Company has the facilities of affording continuous Commodity and Stock Quotations, which continuous service is indispensable in the efficient and proper marketing of orders in Commodities and Stock and to compete with the service afforded branch offices by leased wire firms in the same or similar business.

There is no facility furnished either of my offices by the leased wire of John F. Clark & Company that can, in any manner, be considered as 'unfair competition' to any person, firm or corporation whomsoever and whatsoever engaged in the same or similar business.

My interpretation of Section 6 of Article 7, in its present language, would cause both of my offices to be closed in order to comply with the letter of the CODE.

I therefore respectfully and earnestly petition that Section 6 of Article 7 of the proposed Telegraph Code be withdrawn or so amended in its wording as to provide the

Wms

relief asked for herein.

Deputy Peebles: Is there any further statement that you wish to make?

Mr. Dowling: I think not; not at this time.

Deputy Peebles: I would like to ask you a few questions.

You have two offices?

belog
5/17
Friedli
D 10

Kern
fls
Wms

Mr. Dow ling: We have two offices.

Deputy Peebles: Where are they located?

Mr. Dowling: Greenwood and Anderson, South Carolina.

Deputy Peebles: Both are connected to this line leased by John F. Clark & Company?

Mr. Dowling: Both are connected.

Deputy Peebles: They are connected by a telegraph loop, with a Morse key?

Mr. Dowling: Well, it is a wire circuit which affords a continuous quotation service in commodities and stocks.

Deputy Peebles: Can you send a message from either of your offices?

Mr. Dowling: Yes, sir.

Deputy Peebles: Are you named in the lease of John F. Clark & Company?

Mr. Dowling: I am not a party to the lease, but both of my offices are mentioned as receiving service over the circuit.

Deputy Peebles: How do you compensate John F. Clark & Company for that service?

Mr. Dowling: Well, as a member of the New Orleans Stock Exchange, we split brokerage on cotton and on stocks that I give them that are executed by the firm on the New York Stock Exchange.

There is a gradual scale of specific charges for the execution of those orders, and I am permitted by the stock ex-

change, as a member of a commodity exchange, to-wit: the New Orleans Cotton Exchange, to make an extra charge for the execution of the stock orders.

Deputy Peebles: An extra charge? That is because of the facilities that you offer? Is that it?

Mr. Dowling: In my two offices; yes, sir. This extra charge is very small, however, and it just about compensates me for whatever expense I may be put to in the expedition of those orders.

For intance, I do a lot of writing, have a lot of mail, and a list of stocks is sent in by registered mail to John F. Clark & Company, and there is a small expense, and I make a little charge to cover that expense.

Deputy Peebles: Do you send any messages over that wire other than in connection with the brokerage business?

Mr. Dowling: None whatever.

Deputy Peebles: All of the messages that go over that wire are in connection with the business that you do with John F. Clark & Company?

Mr. Dowling: Exclusively, yes, sir.

Deputy Peebles: And there is no compensation that you pay to John F. Clark & Company, except the sharing of commissions?

Mr. Dowling: That is correct, sir, and that is permitted by the rules of the exchange.

Deputy Peebles: Thank you very much.

Mr. D. E. McCuen, of D. E. McCuen & Company, Incorporated.

(No response)

Deputy Peebles: Mr. A. L. Green, of the Farr Alpaca Company.

(No response)

Deputy Peebles: Mr. W. M. L. Wagner, of the Western Fruit Jobbers Association of America.

(No response)

Deputy Peebles: Mr. Karl D. Loos, representing the California Fruit Growers' Exchange, Los Angeles.

STATEMENT OF MR. KARL D. LOOS

CALIFORNIA FRUITE GROWERS' EXCHANGE, LOS ANGELES

Mr. Loos: My name is Karl D. Loos. I am traffic counsel of the California Fruit Growers' Exchange, of Los Angeles.

The California Fruit Growers' Exchange is a cooperative agricultural organization, engaged in the marketing of citrus fruit, and it markets something over 70 percent of the citrus fruit grown in California and Arizona. Its annual business is from 50,000 to 60,000 carloads of citrus fruits a year, and the gross sales run from $80,000,000 to $100,000,000 a year.

The exchange is owned and controlled by some 13,500 growers of citrus fruit in Arizona and California. Those growers are organized into local associations, which operate packing houses, where the fruit is packed and made ready for market,

and the local associations, in turn, are organized into district exchanges, 25 in number.

These district exchanges handle from several hundred to 4000 or 5000 cars of fruit a year, and each district exchange has a member on the board of directors of the California Fruit Growers' Exchange, the central organization.

So you will see from this that a cooperative organization of this character is controlled from the grower on up through the local association, through the district exchange, and on up to the central organization.

The central organization is not the centralized, controlling body, as it is in the case of a private corporation. So, because of this independence of the constituent members, and because of the form of control, it is necessary that each one of the members and each of the district exchanges be a separate organization from the California Fruit Growers' Exchange, and so we differ in our organization from the organization of a private corporation with a large number of branch offices.

However, the whole organization is a single service unit, just as much so as though it were a large private corporation with numerous branch offices.

All of these organizations, including the district exchanges and the local associations, are organized under the laws of the State of California pertaining to the organization of cooperative agricultural, horticultural, and viticultural

organizations.

The central organization of the California Fruit Growers' Exchange also maintains 56 branch offices in the principal markets of the country and those are, strictly speaking, branch houses, and part of the exchange's own corporate organization.

The perishable nature of the products which we market requires a fast messenger service in the handling of quotations. I might say that the control over the final disposition of the product is preserved in the local association, and no sale can be made of any car of oranges or grapefruit or other fruit without the approval of the local association where that car was packed, and so it requires a continuous flow of messages from our sales office to the central exchange through the central exchange and through the district exchanges and local associations and back again to the central exchange in the handling of this tremendous volume of business.

We are interested in the code now under consideration in two respects:

First, with respect to its effect upon the teletype service. The California Fruit Growers' Exchange maintains a teletype service from the central office in Los Angeles to each of the district exchange offices in different parts of the State of California.

That teletype service is a one-way service, and the object is to release to each of the district exchanges simultaneously

all market information and information relating to the sale of their fruit.

Messages from the district exchange to the central association or central exchange cannot come over the teletype service. Those messages come in by telephone or by telegraph.

Just as an illustration of the type of messages sent out over the teleteypo system, every morning we receive from each of the ten sales offices at the central office in Los Angeles a message giving a summary of the market situation, giving the temperature and weather conditions, which are very important in connection with the sale of citrus fruit, and information of that character which will aid those who have to make the decisions on the sale of fruit during the day to form their opinions.

As the markets open in the various parts of the country, particularly the auction markets, there is a continuous stream of quotations going over the wires from our sales offices to the central exchange, and those, in turn, are put out over the teletype, so that all of that information is made available simultaneously to all of the district exchange offices.

Without the teletype it would be necessary to handle that information in a much more complicated manner, and we would not be able to handle it fast enough to give them nearly as much of the information as we can with the teletype, and it would simply mean that our service would be that much less efficient

and the various exchanges would have that much less aid in making their decisions on the sale of fruit.

It would make more difficult the marketing of this volume of fruit and, as we see it, it would not be of any benefit to anyone.

I have referred already to the distinction or the difference between a cooperative organization and a private corporation.

If this organization of ours were a private corporation, with 25 branch offices all under the same corporate organization, instead of a cooperative organization having each one of the 25 offices incorporated separately, then, under section 6 of the code, as I read it, such an organization would be entitled to maintain a teletype service between its own offices. Now, while each of the district exchanges are so exactly incorporated from the central exchange, and they must necessarily be so because of the form of control, we are, nevertheless, a single business unit, just as much so as if it were a private corporation with that many branch offices.

So we say that if the service of the teletype and leased wires is to be permitted to a private corporation with its own branch offices, as we understand section 6 does permit, it would be unjustly discriminatory not to give a cooperative organization, which conducts the same kind of a business and in the same way, the same privilege.

The Administration has already taken some affirmative action to forbid discrimination of some firms against a cooperative organization.

I refer to the exec utive orders issued by the President, No. 6355, dated October 25, 1933, and No. 6606(a), dated February 17, 1934.

While those executive orders do not probably apply to this particular situation, they do indicate the policy of the Administration, that a cooperative organization should not be discriminated against because of the peculiar form of its organization, necessitated by the manner in which control of the cooperative is exercised, being in the reverse direction from which control is exercised in a private corporation.

We would suggest an amendment to section 6 to meet our situation, by adding another paragraph -- probably it should come in following the second paragraph of the present section, reading somewhat in this manner:

"This section shall not apply to the interchange of wire facilities between the lessee and branch offices or interrelated agencies of the lessee, even though such branch offices or agencies be separately incorporated organizations."

Mr. Scott: May I interrupt you?

Mr. Loos: Yes.

Mr. Scott: Is the central exchange also incorporated under the laws of California, under the cooperative laws?

Mr. Loos: Yes, sir.

Mr. Scott: That is a separate corporate entity?

Mr. Loos: Yes.

Mr. Scott: Owned and controlled by the various district cooperatives?

Mr. Loos: It is owned and controlled by the growers, through their local associations and through the district exchanges it is a federation beginning with the growers and working up to the central exchange.

Mr. Scott: The local exchanges are also incorporated?

Mr. Loos: Yes, sir.

Mr. Scott: And the district exchanges, and the central?

Mr. Loos: Yes, sir.

Mr. Scott: And the control is at the base?

Mr. Loos: Yes, sir.

Mr. Scott: How do you allocate expenses, such as the expense of the teletype service?

Mr. Loos: There is no allocation of individual expense items. The total expenses of marketing are figured at the end of the year and assessed at so much per box on the total volume of fruit handled.

The assessments are made separately for the different fruits: lemons, grapefruit, and oranges, and then the oranges separately between the Valencia and the navel varieties, but the final out-turn is an assessment of a certain amount per box

on each variety of fruit.

Mr. Scott: Do you know whether this whole group of co-operatives would come within the definition of cooperative in the executive orders that you mentioned?

Mr. Loos: Unquestionably.

Mr. Scott: Thank you, sir.

Mr. Loos: I heard one of the witnesses, a gentleman representing the Dow-Jones News Service, make a suggestion that would probably meet our situation also in connection with this leased-wire service.

His suggestion was to exclude from the operation of section 6 one-way transmission by teletype.

Our transmission is a one-way transmission. In that connection, I think perhaps another way to accomplish the same object would be to make that particular clause of section 6 read, "which permits the use of such wire in telegraphic communications transmitted by any person or corporation other than the lessee."

Any phrase or any amendment of that kind would be entirely satisfactory to us, although we have suggested the one that we have suggested because it may possibly affect other provisions of the code, too.

In other words, in any respect where a distinction is to be made, that distinction should not be made on the basis of corporate organization, because to do so would leave out co-

operative organizations, which, by their very nature, must be composed of a multitude of corporations, and yet they transact business of the same character and of the same magnitude and in much the same manner as private corporations, which can blanket any of their offices under a single corporate entity.

We are also interested in the effect of this code, if any, upon the time-wire service and the serial-message service. We are advised that the adoption of the code will make it impossible to continue any of those services.

If that is true, we hope and earnestly urge that an amendment be made which will permit those services to continue.

On this point I also speak for the California Fruit Exchange of Sacramento, which is the largest marketing organization of deciduous fruit grown in the State of California, deciduous fruit includes pears, peaches, plums, grapes, cherries, apples, and fruits of that kind.

That exchange uses under contract the sales offices of the California Fruit Growers' Exchange. It has its own district exchanges and its own local associations, which are all organized as cooperative associations, in much the same manner and under the same laws as the California Fruit Growers' Exchange.

For both of these organizations, the time-wire service and the serial-message service are exceedingly important. We have from our sales offices to the central exchanges at Sacramento and at Los Angeles a daily stream of wires going in both directions.

directions, showing quotations, condition of cars, condition of ice in bunkers, and instructions as to disposition, and those messages have to be sent immediately upon arrival of the car or immediately upon the making of a sale, and they cannot be held to accumulate, and the serial-message service gives a much more economical service for messages of that kind.

Deputy Peebles: May I interrupt to ask why you use the serial letter rather than the day letter?

Mr. Loos: Because we have a large number of short messages.

Deputy Peebles: And you find it cheaper than a day letter?

Mr. Loos: If we can combine the messages covering a number of cars into a single message, we would send it by time-wire service.

If, however, the one car comes upand has to be disposed of, we send a short message which would be less than the length of the day letter, and give that a serial number to a part of the serial-message service, and that, then, in combination with subsequent wires during the day covering other cars, gives us our total daily serial messages.

We made an effort to make some estimate as to the difference in cost.

Of course, to make any analysis of the messages for any length of time would be an exceedingly burdensome task, and we have not undertaken that, but we doknow that the volume of sales during the past few years has been substantially the same as

during the two years previous when the time-wire service and serial-message service were not available, and the telegraph bill of the California Fruit Growers' Exchange during the past two years has been $75,000 a year.

During the preceding two years it has averaged about $100,000 a year, so that we estimate that the saving of the time-wire service and serial-message service represents about $25,000 a year to the California Fruit Growers' Exchange.

In the case of the California Fruit Exchange, the present telegraph bill, for the past year, was $26,000, and is estimated that with a discontinuance of the time-wire service and the serial-message service, that bill would be increased in the neighborhood of $10,000.

It is questionable, however, whether such increased expenses would occur, because, under the pressure for saving and the cutting down of expenses, that results from the low market prices of fruit during the last two or three years, great efforts have been made to economize in every manner possible. We have cut down some of our wire service through substitution of the air mail, and in the event telegraph rates were increased I am sure there would be serious effort made to reduce the use of the wires through the further use of air mail and through the further perfection of telegraphic codes, which we now use in great volume, so that while the expenses of the wire service which we use would undoubtedly be increased to some extent, the

use of the service would undoubtedly be considerably curtailed and the telegraph companies would not derive an increased revenue equivalent to the difference in the rates on the present volume of business.

So we urge that the code be amended in some way that will remove any doubt as to the authority of the telegraph companies to continue the present time-wire service and serial-message service.

I have here copies of the executive orders to which I have referred, which I will be glad to leave with you if you care to have them.

Deputy Peebles: We have copies of those, but if you want to put them in the record, you may.

Mr. Loos: I do not care to put them in the record. I think that the reference to them by number is sufficient.

Deputy Peebles: You referred to them by number, did you, Mr. Loos?

Mr. Loos: Yes.

That is all that I have to say.

Deputy Peebles: Thank you very much.

Previn

Deputy Peebles: Mr. B. M. Knobel.

(No response.)

Deputy Peebles: A representative of the California Fruit Exchange, Sacramento.

Mr. Loos: I spoke for that organization.

Deputy Peebles: Mr. H. C. Albin of the National League of Commission Merchants.

(No response.)

Deputy Peebles: Mr. H. F. Waidner, Jr., of the National League of Commission merchants.

(No response.)

Deputy Peebles: Mr. Moultrie Hitt of the Utility Accountants and Tax Consultants.

Mr. Hitt, will you give your full name and representation for the purpose of the record.

Mr. Hitt: My name is Moultrie Hitt, attorney, Washington.

STATEMENT OF MR. MOULTRIE HITT

Mr. Hitt: Mr. Administrator, my name is Moultrie Hitt, attorney, Washington, and I appear here to represent the Utility Accountants and Tax Consultants. I have prepared some amendments to sections of Article VII of the proposed code by way of illustrating the difficulties which we see, which we would like to have taken care of. I might say that it is my personal conviction that the Interstate Commerce Commission

E-3

has jurisdiction of this particular subject, but we do not understand that that is to be discussed here, and we are simply addressing ourselves to the matter from the practical standpoint of the consumer.

tt's
ver file

This Party: Utility Accountants and Tax Consultants perform an extensive accounting, tax, corporate, financial, and other services for a large number of public utilities and other clients; however, not including any units of the Telegraph Communications Industry.

Previn Turn E - 1 Telegraph

Others Also Interested: We serve clients in twenty-six different states and some in places outside the United States, all of whom have an immediate vital interest in the efficiency and economy with which we can serve them.

Its Interest is as a "Consumer": The use of telegraph and telephone service by Utility Accountants and Tax Consultants is constantly increasing, and it is such a large item of cost that we and those we serve have a very vital interest in both (1) the efficiency with which the communications industry renders its service; and (2) the economy of its methods as reflected in its charges for services of the most efficient types.

More Economical Types of Service: We employ all the various types of communications service, and by actual experience we know and appreciate the superior economy of the newer types of modern service, and as a consumer we object to abolishing or penalizing those services to provide a costly indirect subsidy for more obsolete methods.

Types We Use: We use the Serial Message, the Timed Wire Service, and also the Tel-Type service, all three of which com-

pete with each other, and while the cost to us per message is much less than what it would be at single message rates, we send several times as many message words by these newer classes of service, we spend more than we ever did for wire communications because the lower cost per message enables us to use wire communications service instead of mail to an extent we couldn't possibly afford at the message rates, and we would simply be forced back to the use of the mails, at a substantial net loss to the communications industry as a whole.

Call Box and Machine Charges: We also object for the same reasons to having our communications' costs increased by tacking on extra charges for call boxes, and machines, because the rates have long included the cost of those incidentals; and the more inconvenient and costly the communications service is made for us the more it will increase the incentive to use the mails.

To require payment for call boxes, and that would obviously prompt the elimination of unnecessary boxes, and that would plainly work against the smaller units in the industry which do not cover so wide a territory.

Article VII - Page8 - 11

PROPOSALS

We are not interested in the Code as a whole, and therefore address ourselves specifically to Sections 3, 4, 5 and 6, and submit certain amendments intended to help guard against the evils which impress us the most:

(Additions are indicated by underscoring)

Section 3 - Page 10

Precede with the words:

Section 3. Except where the rates heretofore charged have customarily included, or may hereafter include the same, no member of the industry shall give, permit to be given, or offer to give, or perform, any telegraphic communication service, or any service incidental thereto, or the use of any telegraphic facilities, appliances, or equipment, without charging as compensation therefor an amount sufficient to constitute a just and reasonable charge and one which is commensurate with the services rendered or thevalue of the use given or permitted, nor shall any member of the industry charge for the rendering of any service in or incidental to or connected with telegraphic communications to any other member of the industry, a compensation therefor which would result in affecting materially and adversely the ability of such other member to render adequate service to the public or to maintain the provisions andstandards of this code, or which would result in causing or maintaining an undue or unreasonable increase in charges for any telegraphic communications service.

COMMENT

The object of this addition is to make it clear that the consumer is not to be "gypped" where the rates really cover this or any other alleged incidental service.

Section 4 - Page 11

Section 4. No member of the Industry shall make, give, or permit a rate to one or more users of any class of service, unjustly or unreasonably discriminatory against other users of the same class of service, or against users of any other class of service; nor shall any member of the industry engage in or permit destructive rate or price-cutting which inures to the benefit of the users of one class of service and discriminates against or unduly burdens users of other classes of service.

Change the period at the end to a comma and add:

provided, however, that the charge for each class of service shall not be more than is just and reasonable for each particular class of service, or not more than will enable telegraph services to compete efficiently with telephone services.

Comment

The object of this addition is to make it clear that this Section is not to be used to charge higher rates for different classes of service in order to hamstring new and modern efficient services at reasonable rates for those services, in order to unduly favor less efficient or obsolete methods and types of service

Section 5 - Page 11

Section 5. No member of the industry shall engage, or shall permit any company subsidiary to or controlled by it to engage in any practice concerning the sale, lease, or use of any appliance, equipment, parts, or materials used or useful in

telegraphic communications for a charge which would result in affecting materially and adversely the ability of another member of the industry to maintain the provisions and standards of this code, except where the rates heretofore charged have customarily included, or may hereafter include the same, or to render adequate service to the public, or which would result in causing or maintaining an undue or unreasonable increase in charges for any telegraphic communication service.

Comment

The object of this amendment is to make it plain that the consumer isn't to have to pay twice for the same thing.

Section 6 - Page 11

Section 6. No member of the industry shall enter into any lease of a wire, or provide any leased wire service, under existing lease or otherwise, which permits the use of such wire in telegraphic communication by any person or corporation other than the lessee or lessees thereof; nor shall any member of the industry permit any use of a leased wire, for compensation or otherwise, under existing lease or otherwise, which will result in giving to any user thereof, other than the lessee or lessees, a rate or service more favorable than that which is afforded to other persons using or requiring substantially similar service.

Comment

The object of this amendment is to make it clear that two or more lessees can join together in sharing one lease service

as they now can do.

Deputy Peebles: Thank you very much, Mr. Hitt.

In an effort to expedite these hearings and so as not to keep you gentlemen here in Washington any longer than is necessary, we are going to have a night session tonight starting at 8 o'clock promptly.

We will recess now until that time.

(Whereupon, at 5:10 o'clock p. m., a recess was taken until 8 o'clock p. m. of the same day.)

UNIVERSITY OF ILLINOIS-URBANA
3 0112 098210872